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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 63

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS, PETITIONERS,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED APRIL 21, 1944.

CERTIORARI GRANTED MAY 29, 1944.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 915

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS, PETITIONER,

vs.

THE UNITED STATES.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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IN THE COURT OF CLAIMS

No. M-107

THE NORTHWESTERN BAND OR TRIBE OF SHOSHONE INDIANS and the Individual Members thereof, Petitioner,

vs.

UNITED STATES OF AMERICA, Defendant.

PETITION—Filed March 28, 1931

To the Honorable, the Chief Justice and Associate Justices of the Court of Claims:

Your Petitioner, the Northwestern Band or Tribe of Shoshone Indians and the individual members thereof, respectfully represents to the Court:

[fol. 2] I

That it is a well recognized large band or tribe of the Shoshone Indian nation or people, said Shoshone nation or tribe, as it has been called, being composed of three main tribes or bands, namely, the Eastern Shoshone band or tribe now occupying land in the State of Wyoming under treaty with the United States; the Western band or tribe of the Shoshone Indians occupying lands in the States of Nevada, Idaho, California and Oregon, and your petitioner, the Northwestern band or tribe of Shoshone Indians, long occupying land throughout the part of the State of Utah north of the Great Salt Lake and extending thence westerly to the northeastern section of the State of Nevada and thence easterly to the northwestern section of the State of Wyoming and thence northward between these two aforesaid east and west boundaries into the State of Idaho to and including the Valley of the Snake River in said State of Idaho and mountains adjacent thereto, said land having been held in common by original possession and by virtue of treaty recognition by the United States, which made treaties in the 60's with the Eastern, Western and Northwestern bands of Shoshone Indians recognizing the lands and habitat of the several bands or tribes of the Shoshone nation of Indians.

Petitioner also held in common with the Bruneau and Boise Shoshones and the Bannock, otherwise styled the

Pañaiti tribe and other Indians, a large area known as the Great Camas Prairie wherein grew a root famed among Indians as necessary to their existence and a certain valley near to and northwest of the Great Camas Prairie where [fol. 3] grew the sago root, said Camas Prairie area being a region wherein the several tribes might resort by common custom and agreement with perfect safety and freedom while there from attack for feasting and gathering of vegetable life recognized as essential to their health.

II

Your petitioner brings this suit by virtue of an act of Congress, approved February 28, 1929 (45 Stat. 1407), entitled "An Act conferring jurisdiction upon the Court of Claims to hear, adjudicate, and render judgment in claims which the Northwestern Bands of Shoshone Indians may have against the United States," which act reads as follows:

> BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That jurisdiction be, and hereby is, conferred upon the Court of Claims, notwithstanding lapse of time or statutes of limitations, to hear, adjudicate, and render judgment in any and all claims which the northwestern bands of Shoshone Indians may have against the United States arising under or growing out of the treaty of July 2, 1863 (Eighteenth Statutes, page 685-2 Kappler, 848); treaty of July 30, 1863 (Thirteenth Statutes, page 863-2 Kappler, 850); Act of Congress approved December 15, 1874 (Eighteenth Statutes, page 291), and any subsequent treaty Act of Congress, or Executive order, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.
>
> [fol. 4] SEC. 2. That any and all claims against the United States within the purview of this Act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act; and such suit shall make the northwestern bands of Shoshone Indians party plaintiff and the United States party defendant. The petition shall be verified by the

attorney or attorneys employed to prosecute such claims under contract with the northwestern bands of Shoshone Indians, approved by the Commissioner of Indian Affairs and the Secretary of the Interior as provided by law. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys for said Indians to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys for said Indians.

SEC. 3. That in said suit the Court of Claims shall also hear, examine, consider, and adjudicate all claims which the United States may have against the said northwestern bands of Shoshone Indians. Any payment which may have been made by the United States, including gratuities for the benefit of any band or bands of said Indians or for their support and civilization, shall not operate as an estoppel, but may be pleaded as a set-off in said suit.

SEC. 4. That from the decision of the Court of Claims in any suit prosecuted under the authority of this Act an appeal may be taken by either party, as in other cases, to the Supreme Court of the United States.

SEC. 5. The Court of Claims shall have full authority by proper process and orders to bring in and make [fol. 5] parties to such suit any and all persons deemed by it necessary or proper to the final determination of the matters in controversy.

SEC. 6. A copy of the petition shall, in such case, be served upon the Attorney General of the United States, and he or some attorney from the Department of Justice to be designated by him is hereby directed to appear and defend the interests of the United States in such case.

SEC. 7. Upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed 10 per centum of the recovery, together with all necessary and proper expenses incurred in preparation and prosecution of the suit, to be paid to the attorney or attorneys employed

by said northwestern bands of Shoshone Indians, or any of them, and the same shall be included in the decree and shall be paid out of any sum or sums found to be due said bands.

SEC. 8. The balance of the proceeds of all amounts, if any, recovered for said northwestern bands of Shoshone Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 4 per centum per annum from the date of the judgment or decree and shall be subject to appropriation by Congress only for the health, education, and industrial advancement of said Indians.

III

This petition is filed in behalf of said Northwestern Band or Tribe of the Shoshone Nation or Tribe of Indians by their attorneys under a contract of employment between said Northwestern Band and Charles H. Merillat and [fol. 6] Charles J. Kappler dated March 19, 1926, duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior on June 19, 1926.

IV

The Shoshone Nation or Tribe of Indians from time immemorial and prior to the time the first white explorers visited the Rocky Mountain region, and until and after the making of the treaties of 1863 hereinafter mentioned, with the assent, recognition and acknowledgment of all other Indians having any knowledge of them and their country and of all white nations claiming same as part of their general national domain had as their habitat and range and in their exclusive use and occupancy and claimed and used as their own for their ranging, hunting and grazing grounds and for their fields and the gathering of the products of the soil and of fuel a vast region extending as far east as parts of the Wind River and Uintah Mountains and extending thence westward through the Great Salt Lake on the south and into the State of Nevada as far as the State of California and following on the north the Snake River, its valleys and adjacent mountains westward into the States of Oregon and California. The region was visited only at rare intervals by the white man, these few

persons being either explorers or hunters and never in large numbers or making permanent settlements therein until after the discovery of gold in California in the late forties and in Idaho and Oregon in the early sixties, save and except that the Mormons in the fifties occupied a small area around Great Salt Lake as a home and refuge safe [fol. 7] from molestation by the United States. Aside from this Mormon colony even at late as 1860 the only white persons were explorers and hunters and persons traversing a few roads through the country en route to the Pacific Coast. The country had a good supply of game on which chiefly the Shoshone Nation of Indians depended for their existence and which game they followed as it roamed through the vast territory described.

V

The Shoshone Nation or Tribe during this period had three well defined, well recognized divisions thereof. When they assembled as they occasionally did for purposes of mutual offense or defense against other tribes of Indians, determination of matters of Indian policy or of hunt of the buffalo which constituted so large a part of their means of livelihood, being food, raiment and shelter to them, or for purposes of social enjoyment, ceremonies, religion, marriage or feasting, the headship or chieftainship over the whole Shoshone Nation by consent was accorded to the principal chief of the Eastern band or tribe of Shoshones by virtue of the fact it was the largest in numbers and the principal home of the buffalo was there. These three grand divisions were the Eastern tribe or band or buffalo eaters, its area extending westward to what is known as the Bear River and Port Neuf Mountain region, the Northwestern tribe or band whose area extended from the aforesaid Bear River and Port Neuf Mountain country along the Snake River in the north and to the country of the Great Salt Lake on the south and westward to the mountains near the boundary between Utah and Nevada wherein lie the head- [fol. 8] waters of the Raft River and Goose Creek, which flow into the Snake River, this band subsisting partly on buffalo to be found, but in smaller numbers within this area, than in the land of the Eastern Shoshones, but also largely relying on deer, smaller forms of animals, nuts and produce of the soil; and the western band of Shoshones

who were less closely knit into a communal life and were desert dwellers in the south and largely relied on produce of the soil, fish and what game could be found eked out by hunting by courtesy with their brethren of the same language living eastward—the area of country of the Western Shoshones embracing the south part of the Great Salt Lake Desert, part of Nevada and along the Snake River west of where lies the confluence in Idaho of the Raft River and Goose Creek with the Snake River.

Each of these main three tribes or bands in turn had several or more smaller subdivisions, recognizing a principal chieftain but with heads or chiefs over the several smaller subdivisions. So little was known by the United States in this period of the Indian tribes of Western Colorado, Western Wyoming, Utah and Idaho as late as the early fifties that a supposedly comprehensive "statement showing the tribes of Indians within the limits of the United States" (Annual Report of Commissioner of Indian Affairs for 1855-56, pages 575-6) does not even mention the Shoshone or Utah Indian nations or tribes though each tribe comprised many thousands of persons, the Utah tribe occupying and claiming only territory south of that described herein as Shoshone country and each in numbers exceeding five thousand souls.

[fol. 9] VI

After the discovery of gold in 1848 in the mountains of California near Sacramento, there came in the fifties travel by wagon through to the Pacific Coast, first by way of Great Salt Lake and in the late fifties one such road to northern California and one to southern Oregon, which said roads passed through the lands of petitioners, crossing each other there after passing through the country of the Eastern band of Shoshones and proceeding thence through the country along the Snake River of the Western Shoshones. These roads lying through the lowlands drove away the game and steadily reduced the means of livelihood of the Shoshones and further south of the Utah tribe and of the Goships or small bands of Indians who lived a precarious existence in the southern part of the Great Salt Lake desert, causing great dissatisfaction among the Indians, aggravated frequently by the conduct of the wilder and more reckless element among the travelers. When gold

was discovered in the early sixties in the Beaver Head, Salmon River and Boise areas in Idaho, the rush of settlers along the Snake River through the domain of petitioners and of the other members of the Shoshone tribe attracted large numbers of reckless and dissolute whites to the highways, who formed gangs of robbers which in the canyons preyed upon travelers and the Indians alike, until the name of Idaho became a reproach to decent people. These dissolute characters frequently threw the blame of their misdeeds on the Indians and in furtherance of their plans with whiskey and by other means induced some Indians to join them and by propaganda and other methods in- [fol. 10] flamed members of the Shoshone Tribe already dissatisfied and suffering as with destruction of the game and driving thereof into mountain recesses they faced, and in some instances suffered, starvation. The result was murder, robbery and violence, augmented by the machinations of the Sioux, Cheyenne and other easterly Indian tribes who sought to embroil all Indians with the whites as their only escape from annihilation. The United States determined to make the high roads safe and as preliminary to peace treaties so providing with the Shoshones, Utah and other tribes, sent forth military expeditions to find and lick the Indians who were poorly equipped to fight well armed soldiers. The greater portion of petitioners were friendly to the whites, but unable to restrain the wilder and more desperate of their people, some of whom, usually incited by white desperadoes, attacked emigrant trains.

VII

In 1862 expeditions equipped by the United States pursuant to its major policy of safety for its citizens traversing the Indian country, fought and licked the Goship and the Utahs. In January, 1863, some hundreds of members of the Northwestern band of Shoshones were foregathered at one of their customary wintering places at Bear Lake and along Bear River in southeastern Idaho under their principal chiefs, Pokatello and Sanpitz, both held in esteem for their prowess as hunters and warriors and the more peaceable chief Toomontso, known to the whites as Black Beard, with one or two smaller bands from the Eastern Shoshone Tribe acknowledging Washakee as their head chief. Their purpose was hunting for food in the snows

[fol. 11] among the mountains to which the larger game had been driven by the aforesaid large travel on the highways. They were surprised and attacked in their camps by General Connor with 250 men who had fought the California Indians and had as a precept that the only good Indians were dead Indians. A severe battle ensued in which 224 Indians, men, women and children, were killed with a loss to the soldiers of 14 killed and 49 wounded. This was the last time the petitioners ever fought against the white men and thereafter they were cowed and afraid to assert their rights even when their land and water rights were taken from them and they were forced, as they subsequently were forced, to become wanderers, without homes in the land theirs by immemorial right and treaty acknowledgment, made in 1863 with them by the United States. Toomontso or Black Beard as the more peaceable of petitioners' tribe or band was declared principal chief thereof by the army.

VIII

Following its military subjugation of the Indians and pursuant to its aforesaid policy to make safe the routes of travel for its emigrants and others who wished to proceed to the mining fields of California, Nevada, Utah, Idaho and parts of Oregon, and its policy to define the boundaries of Indian tribes to the end that the peace of the United States and its citizens might not be endangered by disputes between the several Indian tribes or bands, as to the territory to which said tribes or bands were entitled, the United States in the year 1863 made a series of treaties with the Shoshone tribe of Indians and the several bands thereof. [fol. 12] The first of said treaties was that made with the Eastern band of Shoshones, constituting the largest of the bands which in the aggregate made up the Shoshone tribe or nation of Indians.

Said treaty with the Eastern Shoshone tribe or band was made on July 2, 1863, and proclaimed after due ratification on June 7, 1869 (18 Stats. 685; 2 Kappler Indian Treaties, p. 848), and reads as follows:

> "Articles of Agreement made at Fort Bridger, in Utah Territory, this second day of July, A. D. one thousand eight hundred and sixty-three, by and between the United States of America, represented by its

Commissioners, and the Shoshone nation of Indians, represented by its Chiefs and Principal Men and Warriors of the Eastern Bands, as follows:

Article 1

Friendly and amicable relations are hereby reestablished between the bands of the Shoshone nation, parties hereto, and the United States; and it is declared that a firm and perpetual peace shall be henceforth maintained between the Shoshone nation and the United States.

Article 2

The several routes of travel through the Shoshone country, now or hereafter used by white men, shall be and remain forever free and safe for the use of the government of the United States, and of all emigrants and travellers under its authority and Protection, without molestation or injury from any of the people of the said nation. And if depredations should at any time be committed by bad men of their nation, the offenders shall be immediately seized and delivered up to the [fol. 13] proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over said routes is hereby guaranteed by said nation. Military agricultural settlements and military posts may be established by the President of the United States along said routes; ferries may be maintained over the rivers wherever they may be required; and houses erected and settlements formed at such points as may be necessary for the comfort and convenience of travellers.

Article 3

The telegraph and overland stage lines having been established and operated through a part of the Shoshone country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said nation; and that their property, and the lives of passengers in the stages, and of the employes of the respective companies, shall be protected by them.

And further, it being understood that provision has been made by the Government of the United States for

the construction of a railway from the plains west to the Pacific ocean, it is stipulated by said nation that said railway, or its branches, may be located, constructed, and operated, without molestation from them, through any portion of the country claimed by them.

Article 4

It is understood the boundaries of the Shoshone country, as defined and described by said nation, is as follows: On the north, by the mountains on the north [fol. 14] side of the valley of Shoshone or Snake River; on the east, by the Wind River mountains, Peenahpah river, the north fork of Platte or Koo-chin-agah, and the north Park or Buffalo House; and on the south, by Yampah river and the Uintah mountains. The western boundary is left undefined, there being no Shoshones from that district of country present; but the bands now present claim that their own country is bounded on the west by Salt Lake.

Article 5

The United States being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by whites, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, the United States promise and agree to pay to the bands of the Shoshone nation, parties hereto, annually for the term of twenty years, the sum of ten thousand dollars, in such articles as the President of the United States may deem suitable to their wants and condition, either as hunters or herdsmen. And the said bands of the Shoshone nation hereby acknowledge the reception of the said stipulated annuities, as a full compensation and equivalent for the loss of game, and the rights and privileges hereby conceded.

Article 6

The said bands hereby acknowledge that they have received from said Commissioners provisions and clothing amounting to six thousand dollars, as presents, at the conclusion of this treaty.

[fol. 15] Article 7

Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said Treaty with said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the Laws thereof.

Done at Fort Bridger the day and year above written. James Duane Doty, Luther Mann, Jr., Commissioners. Washakee, his x mark. Wahapitz, his x mark. Toopsapowet, his x mark. Pantoshiga, his x mark. Ninabitzee, his x mark. Narkawk, his x mark. Taboonshea, his x mark. Weerango, his x mark. Tootsahp, his x mark. Weeahyukee, his x mark. Bazile, his x mark.

In the presence of—
Jack Robertson, interpreter. Samuel Dean."

Thereafter, by treaty made July 30, 1863, and after due ratification by the Senate, proclaimed January 17, 1865, the United States made a treaty with your petitioner, the Northwestern bands of the Shoshone tribe (13 Stats. 663; 2 Kappler 850), said treaty reading as follows:

[fol. 16] "Articles of agreement made at Box Elder, in Utah Territory, this thirtieth day of July, A. D. one thousand eight hundred and sixty-three, by and between the United States of America, represented by Brigadier-General P. Edward Connor, commanding the military district of Utah, and James Duane Doty, commissioner, and the northwestern bands of the Shoshonee Indians, represented by their chiefs and warriors:

Article 1. It is agreed that friendly and amicable relations shall be re-established between the bands of the Shoshone Nation, parties hereto, and the United States, and it is declared that a firm and perpetual peace shall be henceforth maintained between the said bands and the United States.

Article 2. The treaty concluded at Fort Bridger on the 2nd day of July, 1863, between the United State and the Shoshonee Nation, being read and fully interpreted

and explained to the said chiefs and warriors, they do hereby give their full and free assent to all of the provisions of said treaty, and the same are hereby adopted as a part of this agreement, and the same shall be binding upon the parties hereto.

Article 3. In consideration of the stipulations in the preceding articles, the United States agree to increase the annuity to the Shoshonee Nation five thousand dollars, to be paid in the manner provided in said treaty. And the said northwestern bands hereby acknowledge to have received of the United States, at the signing of these articles, provisions and goods to the amount of two thousand dollars, to relieve their immediate necessities, the said bands having been reduced by the war to a state of utter destitution.

[fol. 17] Article 4. The country claimed by Pokatello, for himself and his people, is bounded on the west by Raft River and on the east by the Porteneuf Mountains.

Article 5. Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof.

Done at Box Elder, this thirtieth day of July, A. D. 1863.

James Duane Doty, Governor and acting superintendent of Indian affairs in Utah Territory. P. Edw. Connor, Bridgadier-General U. S. Volunteers, commanding District of Utah. Pokatello, his x mark, chief. Toomontso, his x mark, chief. Sanpitz, his x mark, chief. Tosowitz, his x mark, chief. Yahnoway, his x mark, chief. Weerahsoop, his x mark, chief. Pahragoosahd, his x mark, chief. Tahkwetoonah, his x mark, chief. Omashee, (John Pokatello's brother,) his x mark, chief.

Witnesses:

Robt. Pollock, colonel Third Infantry, C. V. M. G. Lewis, captain Third Infantry, C. V. S. E. Joselyn, first lieutenant Third Infantry

C. V. Jos. A. Gebone, Indian interpreter. John [fol. 18] Barnard, Jr., his x mark, special interpreter. Willis H. Boothe, special interpreter. Horace Wheat."

The aforesaid Article 5 was not contained in the treaty as originally made between the United States and petitioners, but said Article 5 was added to said treaty aforesaid by the Senate of the United States when it ratified said treaty and thereafter said amendment was ratified and agreed to by petitioners at the instance and request of the United States, although said petitioner did not have any knowledge as to Mexico, or the purpose or intent intended to be conveyed by said Article 5, but accepted the same and agreed to the treaty as amended solely upon representations of the United States that said amendment was desired by the Government of the United States.

Thereafter, in order to complete its agreements with what were the true Shoshone bands constituting the whole Shoshone tribe proper, the United States, on October 1, 1863, made a treaty with the western bands of Shoshone Indians which after due ratification was proclaimed October 21, 1869 (18 Stats. 689; 2 Kappler 851). Said treaty with the western band read as follows:

"Treaty of Peace and Friendship made at Ruby Valley, in the Territory of Nevada, this first day of October, A. D., one thousand eight hundred and sixty-three, between the United States of America, represented by the undersigned commissioners, and the Western Bands of the Shoshone Nation of Indians, represented by their Chiefs and Principal Men and Warriors, as follows:

[fol. 19] Article 1. Peace and friendship shall be hereafter established and maintained between the Western Bands of the Shoshone nation and the people and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States within their country, shall cease.

Article 2. The several routes of travel through the Shoshone country, now or hereafter used by white men, shall be forever free, and unobstructed by the said

bands, for the use of the government of the United States, and of all emigrants and travellers under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their nation, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offenses shall deserve; and the safety of all travellers passing peaceably over either of said routes is hereby guaranteed by said bands.

Military posts may be established by the President of the United States along said routes or elsewhere in their country; and station houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for mail or telegraph companies.

Article 3. The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through a part of the Shoshone country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, [fol. 20] and that their property and the lives and property of passengers in the stages and of the employes of the respective companies, shall be protected by them. And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by the said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of country claimed or occupied by them.

Article 4. It is further agreed by the parties hereto, that the Shoshone country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use, as also for building and other purposes in any part of the country claimed by said bands.

Article 5. It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows: On the north by Wong-goga-da Mountains and Shoshone River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains; on the south by Wi-co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

Article 6. The said band agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which, they now lead, and become herdsmen or agriculturists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country [fol. 21] above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

Article 7. The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, and of their faithful observance by the said bands, the United States promise and agree to pay to the said bands of the Shoshone nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

Article 8. The said bands hereby acknowledge that they have received from said commissioners provisions and clothing amounting to five thousand dollars as presents at the conclusion of this treaty.

Done at Ruby Valley the day and year above written.

James W. Nye. James Duane Doty. Po-on-go-

sah, his x mark. Par-a-woat-ze, his x mark. Ga-ha-dier, his x mark. Ko-ro-kout-ze, his x [fol. 22] mark. Pon-ge-mah, his x mark. Buck, his x mark. Te-moak, his x mark. Mo-ho-a. Kirk-weedgwa, his x mark. To-nag, his x mark. To-so-wee-so-op, his x mark. Sow-er-e-gah, his x mark.

Witnesses:

J. B. Moore, Lieutenant-colonel, Third Infantry, California Volunteers; Jacob T. Lockhart, Indian agent Nevada Territory; Henry Butterfield, Interpreter."

Thereafter, the United States made a treaty with what is known as the Shoshone-Goship bands of Indians at Tuilla Valley in the territory of Utah on October 12, 1863. Said Shoshone-Goship tribe does not and did not constitute a part of the Shoshone tribe proper, but Indians who frequently were by reason of use of some words of the Shoshone language confounded with the Shoshone tribe. Said treaty defined the boundaries of the Goship tribe by Article 5, as follows:

"It is understood that the boundaries of the country claimed and occupied by the Goship tribe, as defined and described by said bands, are as follows: On the north by the middle of the Great Desert; on the west by Steptoe Valley; on the south by Tooédoe or Green Mountains; and on the east by Great Salt Lake, Tuilla, and Rush Valleys."

The land north of the Goships as above described was in Box Elder County, Utah and was part of the country be- [fol. 23] longing to petitioners, whose route of travel from the upper reaches of the Great Salt Lake ran thence to the mountains near what is now known as Montello in northeastern Nevada where the mountain range and Silver Creek run to the headwaters of the Raft river and Goose Creek in the Goose Creek Mountains in the northeastern corner of Nevada and which empty into the Snake river.

IX

Petitioners state that in and by the treaties aforesaid the United States recognized as belonging to petitioners and of

which lands petitioners at the time of the making of said treaty was in actual exclusive use and occupancy with its rights thereto unquestioned by any other Indian tribe or by any other nation, whether that of Mexico, the United States, Great Britain or Spain an area of country defined and bounded as follows: By the eastern shore of the Great Salt Lake at the mouth of Weber river, thence east with said river to the mouth of Lost Creek, thence to the headwaters of Lost Creek and the divide between Lost Creek and Woodruff Creek, thence from the headwaters of Woodruff Creek to Bear river in Northeastern Utah and following the shores of Bear river and its tributaries in a northerly direction east of Bear Lake and into the western edge of Wyoming, thence with what is now known as the Caribou range of mountains in eastern Idaho to the south fork of the Snake river and the valley of the Snake river in eastern Idaho, thence westerly with said Snake river and valley to the mouths of Raft river and Goose Creek in the Snake river, thence south following the Raft River and Goose Creek to [fol. 24] their headwaters in the Goose Creek Mountains in the northwestern corner of Utah and the northeastern corner of Nevada and thence following said Goose Creek Mountains and Silver Creek in the far eastern part of Nevada to near the present town of Montello, Nevada, and thence across the upper half of the Great Salt Lake Desert to the western shores of Great Salt Lake and following said shore to the place of beginning.

Petitioner states that it was in the exclusive possession, use and occupancy of this described area at the time of the making of the treaty of Box Elder of July 30, 1863, and the ratification thereafter of the Senate amendment to same and continued thereafter so to possess, use and occupy same until unlawfully dispossessed thereof by the United States and its citizens who in violation of the aforesaid treaty entered upon from time to time the land and its water courses, entering upon and treating said lands as public lands of the United States open to public entry, creating forest and game preserves of many hundreds of thousands of acres thereof and settling other Indians upon said lands without warrant therefor in the treaty between the United States and petitioners and dispossessing petitioners therefrom, sometimes by force and threats. Petitioners state that by this means they were deprived without compensation of the use

of said lands and were forced to become wanderers thereover, each year witnessing their further exclusion from use of their own lands and their deprivation of means of livelihood until large numbers of them became able to subsist only meagrely and with the aid of those friendly persons who pitied their condition.

[fol. 25] Petitioners state that they never at any time, however, from the date of the treaty, ever took up arms against the United States or its citizens but resigned themselves to futile protests against the wrongs done them.

X

Petitioners state that while they were in the exclusive possession, use and occupation of said lands described and all other Indian tribes recognized and acknowledged same except for a dispute of the Eastern Band or Tribe with the Crow Tribe of Indians as to the eastern boundary thereof in the Wind River Mountains wholly outside and beyond the territory of petitioners, and all other Indian Tribes and even the Crow Tribe acknowledged that the domain of the Shoshone Tribe ran to the Snake River and the Valley thereof on both sides of the river, that said Shoshone Tribe did not object to occasional use for hunting purposes of parts of their lands by other friendly Indians in small parties and indeed invited them to go on hunts with them. Among said tribes or bands was the Bannock Tribe otherwise known as the Panaiti. The Bannocks are a tribe of Indians whose habitat and range was well to the north and west of the Shoshone Indian country, beyond the mountains north of the Snake River Valley near to the territory of the Blackfeet Nation or Tribe in Montana and the Nez Perce and other tribes in Oregon and Washington State. As warfare developed between the Bannocks and its aforesaid neighbors and the pressure of the United States became greater on all Indian Tribes of the Rocky Mountain region due to settlements of its citizens, opening of highways and mineral development and the dispersal of the [fol. 26] game, the Bannock Tribe was forced down to the Southeast and to a large extent became in the sixties without recognized lands of their own. They spoke a wholly different tongue, but were friendly with the Shoshones and had aided them in warfare against Indian enemies and had hunted at times by permission with them and to some extent

in later years had intermarried among the Shoshones. The Bannocks brought their distress to the attention of the United States.

XI

Subsequently thereto, the United States, by treaty dated July 3, 1868 proclaimed after due ratification February 24, 1869 (15 Stats. 673: 2 Kappler 1020) made a treaty with Eastern band of Shoshones aforesaid and the Bannock Tribe of Indians, which said treaty by Articles 2, 4 and 5, provides as follows:

"Article 2. It is agreed that whenever the Bannacks desire a reservation to be set apart for their use, or whenever the President of the United States shall deem it advisable for them to be put upon a reservation, he shall cause a suitable one to be selected for them in their present country, which shall embrace reasonable portions of the 'Port Neuf' and 'Kansas Prairie' countries, and that, when this reservation is declared, the United States will secure to the Bannacks the same rights and privileges therein, and make the same and like expenditures therein for their benefit, except the agency-house and residence of agent, in proportion to their numbers, as herein provided for the Shoshone reservation. The United States further agrees that the following district of country, to-wit: Commencing at the mouth of Owl Creek and running due south to the [fol. 27] crest of the divide between the Sweetwater and Popo Agie Rivers; thence along the crest of said divide and the summit of Wind River Mountains to the longitude of North Fork of Wind River; thence due north to mouth of said North Fork and up its channel to a point twenty miles above its mouth; thence in a straight-line to head-waters of Owl Creek and along middle of channel of Owl Creek to place of beginning, shall be and the same is set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized to do so, and except such officers, agents, and employes of the Government as may be authorized

to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will and do hereby relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid."

Petitioners state that save as to the Camas Prairie styled in the aforesaid treaty the "Kansas Prairie" and the Sago root valley to the northwest which by custom were used in common by all Indians of the region and by reason of necessity of use of the roots to ensure freedom from the ills of too great a meat diet were a sort of Indian sanctuary like the [fol. 28] salt region of Oklahoma and the celebrated pipestone quarries that the Bannack Tribe had and were lawfully entitled to no lands whatsoever within the described domain of petitioners south of the Snake River and Snake River Valley and that the Eastern Band of Shoshones had no claim, and so recognized and acknowledged to the lands of petitioners.

Petitioners state that for some reason to them unknown but known to the United States and disclosure whereof by processes of this court petitioners pray, the United States did not locate the Bannack Tribe as friendly Indians upon the lands set apart for the Eastern Tribe or Band of Shoshones upon what is known as the Owl Creek or Wind River Reservation as it contemplated at the time, but instead settled the unfriendly Arapahoe Indians on same and proceeded without consent of petitioners to settle the Bannack Tribe upon lands in the northeastern part of petitioners herein described domain and also certain Indians known as the Sheep Eaters and created for the Bannacks a reservation out of the lands of petitioners known as the Fort Hall Indian Reservation in Idaho, admitting to said reservation from time to time some individual members of the Northwestern Band of the Shoshone Tribe, most of whom were forced by poverty to accept entrance thereto, others and the greater number of the Northwestern Band of Shoshones being even denied rights therein though the same was their own domain.

XII

Petitioners state that by certain treaties between the governments of the United States and Mexico there was ceded by Mexico to the United States subject to certain reserva- [fol. 29] tions mutually agreed upon between them for protection of the peoples including Indians within the lands ceded, large, and in part at the time, by reason of the very meagre knowledge of much of same, ill defined vast sections of country formerly claimed by Mexico and now forming part of the United States. This cession included lands to the source or headwaters of the Colorado River then unknown to either government. By convention between the governments of the United States, Mexico and Great Britain, which last named government claimed sovereign rights to part of the region occupied by petitioners, it was agreed without consultation with the Indians, that the cession of Mexico to the United States extended along the 42nd degree of latitude from Wyoming to the Californias. This latitude approximates the present boundary between the States of Utah and Idaho. By its terms part of the domain of petitioners fell within the terms of the cession of Mexico to the United States and a larger part fell without said Mexican cession. This fact was wholly unknown to the United States or petitioners when the United States Senate amended and petitioners agreed to the last article added in the Senate to the aforesaid Box Elder treaty of 1863 between the United States and petitioners and in no event could apply to Indian rights outside said cession.

Petitioners state, however, that while Mexico did not accord to Indians the same rights of possession of their lands while they continued to use and occupy same, as did the United States, Great Britain, France and Spain, and refused to acknowledge the Indians right not to deprived of their lands without just compensation and refused to acknowledge the right of Indian tribes to make or the [fol. 30] validity of treaties or agreements if made with them, concerning Indian lands and asserted the absolute right of Mexico at will to remove Indians and Indian tribes from their homes that this absolute power always was conditioned that the government should accompany such removal by provision of other homes and areas of country for the Indians so removed.

By treaty of February 2, 1848 (9 Stats. 22), and prior treaty between the United States and Mexico, it was provided inter alia that the United States "when removing Indians for settlement by citizens shall take special care not to place its Indian occupants under the necessity of seeking new homes by committing those invasions which the United States have solemnly obligated themselves to restrain."

Petitioners state that the United States did not, as stated, provide new homes for petitioners and did not comply as to petitioners with its own policy as to Indian tribes and extinguishment of their occupancy title and their title by treaty or agreement with the United States or upon just compensation therefor as required by the Constitution of the United States.

XIII

The area of country belonging to petitioners at the time of the making of the Box Elder treaty of 1863 includes the following counties in Utah:

Weber, part of Morgan, Rich, Cache and Box Elder.

And the following counties in Idaho: Bear Lake, Caribou, most of Bonneville, part of Bingham, Bannack, part of Power, Franklin, Oneida, a small part of Minidoka, and the larger part of Cassia. Some of said Idaho counties have [fol. 31] been redistricted and new counties created.

Within said area are the following national forest reservations created by the United States and taken from petitioners without compensation: Cache National Forest, Minidoka National Forest, Caribou National Forest, Fort Hall Indian Reservation, Power County State Game Preserve and the Oneida County State Game Preserve. It includes the valleys of the Snake River and tributaries, Bear River and its tributaries, Logan River, Malad River, Raft River, Goose Creek, Weber River, Blue Creek and other streams besides many mountains and within which area and throughout same petitioners established many camps, had their homes and made their living with exclusive use and occupancy thereof.

Its extent in acres is to petitioner unknown but estimated, including the lands in Wyoming and Nevada, at about fourteen million acres. Petitioner states that the exact extent

in acres is known to the United States and petitioner prays an accounting therefor from the United States, including therein the value of the use of the Camas Prairie and Sago Root Country of which petitioner was deprived by the United States and its citizens at the rate of $1.25 per acre, the lowest price at which by statute, in such case made and provided, public lands of the United States have been permitted to be sold for a hundred years last past less the average cost of sale of public lands of the United States of not exceeding twenty cents per acre, petitioners stating that the United States is indebted to petitioners on account of lands of which they were unlawfully deprived by the United [fol. 32] States without compensation as aforesaid as estimated by petitioners in the sum of fifteen million dollars.

XIV

Petitioners state that in and by the treaty of Box Elder of 1863 presents were distributed to petitioner at the time of the signing of said treaty and a distribution made, presumably of annuities, at the time of the ratification of the Senate Amendment to said treaty. From the best information petitioner can obtain after a careful painstaking inquiry of its older members and of old settlers, there was only one other distribution made them. Petitioners are advised that the statutes of the United States show annual appropriations of $5,000 for twenty years by Congress in fulfillment of the Box Elder treaty of 1863 but petitioners state that except as aforesaid the payments of said monies so appropriated were not made to petitioners and petitioners pray that the United States be required to account for all monies or distribution of goods alleged to have been distributed to petitioners with the dates of payments or distributions, to whom claimed to have been made and what rolls of members of the Northwestern Band of Shoshones or other Indians were used as a basis of payments or distributions, petitioners claiming on account hereof the sum of seventy thousand ($70,000.00) dollars with interest.

XV

Petitioners state that they have endeavored to ascertain the numbers of the Eastern, Northwestern and Western bands or tribes of the Shoshone Nation or Tribe of Indians

[fol. 33] in the year 1863 but by reason of the vast extent of country over which they roamed and the slight knowledge of them possessed by the United States or its citizens at the period in question, petitioners are unable to give more than a general approximate estimate of same Petitioners from their best information estimate same at a total of around six thousand to sixty-five hundred, divided as follows: the Eastern band, three thousand or a little more; the Northwestern band, two thousand, and the Western bands, one thousand or somewhat in excess of that number.

XVI

Wherefore, and by reason of the premises aforesaid the Northwestern band or tribe of the Shoshone Nation of Indians and the individual members thereof sue the United States of America for damages for the taking of its lands without compensation therefor and for an accounting, and pray that this Court may render judgment in favor of petitioners against the defendant in the sum of $15,070,000.00 or in such sums as upon full and final hearing and accounting shall be found due the Petitioners by the United States; and for such other and further relief as Petitioners may be entitled to both at law and in equity, and that the Court decree the fees and expenses to be paid attorneys representing Petitioners as provided in the jurisdictional act and in the contract executed in pursuance thereof.

The Northwestern Band or Tribe of Shoshone Indians, Petitioners, by Charles H. Merillat, Attorney of Record.

[fol. 34] *Duly sworn to by Charles H. Merillat. Jurat omitted in printing.*

[fols. 35-36] General Traverse—Filed May 7, 1931

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Charles B. Rugg, Assistant Attorney General.

G. T. S.

Argument and Submission of Case

On March 4, 1941, the case was argued and submitted on merits by Mr. Ernest L. Wilkinson and Mr. Herman J. Galloway for plaintiff, and by Mr. George T. Stormont for defendant.

[fols. 37-88] **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.— Filed March 2, 1942**

Mr. Ernest L. Wilkinson and *Mr. Herman J. Galloway* for the plaintiffs.

Mr. Charles J. Kappler, *Mr. Frank K. Nebeker*, and *Mr. Clinton D. Vernon* were on the brief.

Mr. George T. Stormont, with whom was *Mr. Assistant Attorney General Norman N. Littell*, for the defendant.

Mr. Raymond T. Nagle was on the brief.

In the petition plaintiff bands of the Shoshone tribe seek to recover $15,000,000 for the alleged unlawful taking of their lands, aggregating 15,643,000 acres, in alleged violation of a treaty of July 30, 1863, and $70,000 of the treaty annuities of $5,000 per annum for twenty years which it is alleged the Government failed to furnish in goods and provisions as agreed.

Defendant contends that the treaty of July 30, 1863, with plaintiff bands was a treaty of peace and amity and that it did not recognize, acknowledge, or concede as against the sovereign an exclusive use and occupancy right or title of the Indians; that the United States did not at that time recognize or has it ever recognized an exclusive right of occupancy in plaintiff bands to the whole or any part of the territory now claimed by them, but that it has ever exercised dominion and complete ownership over it.

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Defendant further contends with reference to the annuity provisions of the treaty that if there was any deficiency in the furnishing of the annuity goods provided therein, such deficiency did not exceed $10,804.17.

SPECIAL FINDINGS OF FACT

1. Plaintiff bands of Shoshone Indians were in 1863 and prior thereto a part of about fourteen bands of the Shoshone nation or tribe of Indians located in the territories of Washington and Utah. The area inhabited and occupied by the Shoshone nation or tribe of Indians became a part of the states of Wyoming, Colorado, Utah, Idaho, and Nevada. For convenience the officials and agents of the United States having charge of Indian affairs designated and referred to the plaintiff Indians of the Shoshone tribe as the "Northwestern" bands of the Shoshone Indians in their correspondence, reports, and treaties. The Shoshone nation, or tribe, itself had no such recognized division. The Shoshone tribe of Indians with its affiliated bands of Bannock Indians and a number of individual Indians of other friendly tribes, who had extensively intermarried among the Shoshones and lived with them, roamed over, occupied, and used as their home a vast area approximating 80,825,000 acres. During and prior to 1863 the Shoshone Tribe of Indians and the affiliated bands of Bannocks, from time immemorial, roamed over, lived upon, occupied, and used a territory of the approximate area above mentioned as their home and for their support and livelihood, by hunting and gathering roots, berries and nuts. This approximate area was exclusively claimed by the Shoshone tribe and Bannock Indians as against other tribes, and their possession, occupancy, and use thereof was asserted by them to the exclusion of other tribes of Indians and was thus recognized generally by other separate Indian tribes. During and prior to 1863 the Indians of the Shoshone tribe and the affiliated bands of Bannocks numbered about 9,700. Washakie was the main or principal chief of the Shoshone nation or tribe and of the affiliated Bannocks, and the Shoshone and Bannock Indians and the chiefs of the various bands of these tribes so recognized him as the prin-

cipal chief of the tribe. As was the usual custom among Indian tribes, the Shoshone and Bannock Indians had various bands, each having a chief and various subchiefs or headmen.

2. The territory for which compensation is claimed by plaintiff bands of the Shoshone tribe as for a taking by the United States of their use and occupancy title, which interest they claim was recognized and acknowledged by the United States in a treaty of July 30, 1863, consists of 15,643,000 acres of land of which 6,067,000 acres are located in the southeastern part of Idaho, 6,389,000 acres in the northwestern corner of Utah, including Great Salt Lake, and 3,187,000 acres in the northeast corner of Nevada. The population of plaintiff bands in 1863 was between 1,500 and 1,800.

3. In 1850, and prior thereto, practically nothing was known by the Government with reference to the Indians inhabiting the region which became southern Idaho, eastern Oregon, northern Nevada and northern Utah, and little, if anything, was definitely known of the tribal distinctions or racial affiliations, and the Government had no knowledge of the particular or specific areas occupied by particular tribes or bands. The Indians of this region were denominated as Shoshones, Snakes, and Diggers, or Paiutes.

The Indians of the Shoshone and Bannock tribes have always shown an attitude and desire to be peaceful and friendly to the whites and to the Government. Washakie, principal chief of the Shoshone tribe, and the majority of all the Shoshone Indians of that tribe have been friendly at all times with the white people and with the Government of the United States. The Shoshone tribe, as such, has never at any time engaged in war with the United States. Between 1849 and 1863 some of the Shoshone Indians of the Northwestern Bands caused the emigrants, settlers, and the Government considerable trouble by depredations and warlike acts due to the driving away of game and the destruction of their only source of food supply. Following the advent of the Mormons into Utah, their spread into arable valleys in the southeastern corner of Idaho and the establishment of overland trails to California and Oregon and to the mining regions of Idaho and Montana through

the country inhabited by the Shoshone Indians, trouble between some of the Indians and the emigrants and settlers arose. This was due to the driving away by the emigrants and white settlers of the sparse game supply of the Indians and the destruction of the equally sparse supplies of grass and timber from which the Indians also obtained a considerable portion of their livelihood in the form of roots, berries, and nuts, thus causing the Shoshone Indians, especially those located in south central Idaho, northeastern Nevada, and northwestern Utah to be reduced to a condition of practical starvation, rendering it necessary for them to "steal or starve." The Commissioner of Indian Affairs in his annual report for the fiscal year ending June 30, 1859, stated in part as follows:

> The reports of the condition of the Indians in Utah present a melancholy picture. The whites are in possession of most of the little comparatively good country there is, and the game has become so scarce as no longer to afford the Indians an adequate subsistence. They are often reduced to the greatest straits, particularly in the winter, which is severe in that region; and when it is no uncommon thing for them to perish of cold and hunger. Even at other seasons, numbers of them are compelled to sustain life by using for food reptiles, insects, grass seed, and roots. Several farms have been opened for their benefit in different localities, and many of them have manifested a disposition to aid in their cultivation; but, unfortunately, most of the crops were this year destroyed by the grasshopper and other insects. Many of the numerous depredations upon the emigrants have, doubtless, been committed by them in consequence of their destitute and desperate condition. They have at times been compelled to either steal or starve; but there is reason to be apprehended that in their forays they have often been only the tools of the lawless whites residing in the Territory. In some of the worst outrages of this kind, involving the lives as well as the property of our emigrants, the latter are known to have participated. * * *.

The Superintendent of Indian Affairs for the Utah Territory in his annual report of October 1, 1861, to the Commissioner of Indian Affairs stated:

> Too little attention, I am fearful, has heretofore been paid to the fact that there is very little game in this

Territory, of any description, which the Indians can kill to keep them in food. There is no buffalo whatever that range in this Territory, and very few antelope, elk, deer, mountain sheep, or bear, and these only in certain localities.

Civilization seems to have had the same effect here as has been noticed elsewhere in this country since the first settlement by our forefathers, in driving before it the game natural to a wilderness, and the Indians complain bitterly that since the white man has come among them their game has almost entirely disappeared from their former hunting grounds, and they are now obliged either to beg food from the white settlers or starve.

The driving away of the buffalo not only deprives them of their principal supply of food, but also of a great source of revenue and comfort in the skins, which they sold and used to keep them comfortable in cold weather.

I have had more applications from Indians for beef and flour since I have been here than anything else. They frequently come to me and fairly beg for some beef, to keep their squaws and papooses from starving.

Owing to the limited amount of money placed in my hands, I have been unable to entirely satisfy their demands, but I am confident that what I have distributed in that way has been a great deal more satisfactory to the Indians than three times the amount expended in any kind of trinkets usually disbursed by the department would have been.

The annual appropriation for this superintendency has, in my opinion, always been too small to allow the superintendent and agents to give that satisfaction to the Indians which their wants demand, and a proper regard for the rights and safety of the white settlers, by preventing depredations, requires.

* * * * *

The establishment of the overland daily mail and telegraph lines, and their recent completion through this Territory—consummations of such vital importance to the people throughout the Union—renders it necessary that steps should be immediately taken by the government to prevent the possibility of their being interrputed by the Indians.

On this subject I have taken much pains to consult with most of the leading men connected with these great enterprises, and also with nearly all of the head chiefs of the Indians that range on their lines in this

Territory, and have, after mature deliberation, come to the conclusion that the only manner in which this can be effected to the entire satisfaction and protection of all the parties concerned, is by a treaty between the United States and the tribes of Indians ranging in this superintendency.

In recent consultations or "talks" with the Wash-a-kee and Sho-kub, the head chiefs of the Shoshones or Snake Indians, Navacoots and Pe-tut-neet, chiefs of the Ute nation, and many of the sub-chiefs of both nations, I find that they are unanimously in favor of a treaty with the United States, and agree with me in considering that to be the only effectual way to check the stealing propensities of some of their Indians; and from information gleaned from them on various occasions, I have made the following memorandum in regard to the probable cost and effect of a treaty.

They express their willingness to cede to the United States all the lands they claim in this Territory, with the exception of reservations necessary for their homes; and ask, in return, that the United States shall make them annual presents of blankets, beads, paint, calico, ammunition, &c., with occasional supplies of beef and flour sufficient to make them comfortable, which I estimate can be done with a small addition to the usual appropriation.

* * * * *

I cannot too strongly recommend this course to the department, and sincerely hope that it will meet with that prompt attention that, to my mind, the importance of the subject entitles it. * * *

4. In and prior to 1850, and for several years subsequent thereto, the Government was doing practically nothing for these Indians in the way of providing them with food or supplies. The Indian agents and superintendents in the territory inhabited by the Shoshone Indians frequently went among these Indians, especially those inhabiting the routes of western travel, for the purpose of endeavoring to preserve peace and, to that end, gave the Indians along these routes of travel such presents as they were able to provide, which presents were gratefully received by the Indians. All the Indians encountered by these officials as far west as central Nevada and Salmon Falls on the Shoshone River in Idaho professed friendship for the white people and the Government and showed a real desire for peace; they begged

of the Government officers provisions and supplies from the Government because of the destruction of their only means of livelihood. As a result of the conditions mentioned, certain Indians of the Northwestern Bands of the Shoshones banded together and made attacks and committed depredations from time to time upon emigrant trains. The conduct of certain unscrupulous white men aggravated and encouraged these attacks and depredations. Because of these conditions and with the desire to prevent or to ameliorate them, the United States' agents and superintendents of Indian affairs in that territory constantly made recommendations that the Government make some provision to furnish them with means of aiding the Indians, by furnishing them with food and supplies which would have the effect of bringing about peace and friendship among the Indians. They also recommended that a treaty be entered into with the Shoshone Indians which would provide for care of the Indians and the safety of the emigrants and settlers. These officers were positive in their assertions that this would bring about a condition of permanent peace and friendship with the Indians, because they had found that all the Shoshone Indians with whom they had come in contact in their travels sincerely desired peace. The Commissioner of Indian Affairs and the Secretary of Interior in their annual reports to Congress from 1850 forward made similar recommendations to the Congress. However, it was not until 1862 that any steps were taken by Congress to this end, when, by the Act of July 5, 1862, 12 Stat. 512, 529, being an act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various other Indian tribes, the Congress appropriated $20,000 "for defraying the expenses of negotiating a treaty with the Shoshonees or Snake Indians, or so much thereof as may be needed, to be expended under the direction of the Secretary of the Interior."

On February 26, 1862, prior to the passage of the appropriation act of July 5, the Secretary of the Interior wrote the chairman of the House Committee of Indian Affairs in part as follows:

> The Acting Commissioner of Indian Affairs has submitted to this Department a resolution of the House of

Reps of the 30th ult°, instructing your Committee to "inquire into the expediency of making an appropriation to defray the expenses of holding treaties with the Indians in Utah, with a view to the purchase of their lands," &c. I return the resolution, and enclose herewith, a copy of the report of the Acting Comm'r, dated the 25th ins't containing the views of that officer as to the necessity and propriety of negotiating with the Indian Tribes of Utah, the expense of which will, it is estimated, be $45,000. * * *

The lands owned by the Indians are, most of them, unfit for cultivation, and it is not probable that any considerable portion of them will be required for settlement for many years. The principal inducement to make treaties with those tribes is the control which the Government would thereby be enabled to exercise over them, by which additional security would be given to settlers in the Territory, and to the Overland Mail and Telegraph Lines.

How far it will be proper to incur expense with a view to this obejct, is a matter which must be confided to the judgment of Congress.

5. Pursuant to the appropriation act of July 5, the President appointed a special commission consisting of James Duane Doty, Superintendent of Indian Affairs for the Territory of Utah, later Governor of that Territory, Luther Mann, Indian agent in the same Territory, and Henry Martin, a former superintendent of Indian Affairs for Utah Territory. The failure of Commissioner Martin to reach Utah with provisions and presents in time to meet the Indians before cold weather set in delayed negotiations until June of 1863. Commissioner Martin returned to Washington, after which Commissioners Doty and Mann, assisted by General P. Edward Connor and Governor James W. Nye, concluded the negotiations at a later date, as will hereinafter appear.

6. On July 22, 1862, the Commissioner of Indian Affairs gave Commissioners Doty, Mann, and Martin a letter of instructions as follows:

Congress at its recent Session having appropriated Twenty Thousand Dollars for the purpose of making a treaty with the Shoshonees or Snake Indians, you have been designated by the President to carry into effect the object of the said appropriation. No sufficient reports

of explorations are in the custody of this office to enable me to state definitely the boundaries of the country inhabited and claimed by these Indians, but it is understood that they inhabit the country in the northern part of Utah and eastern portion of Washington Territories, through which lies the route of the overland mail, and the emigrant route through Utah and into Washington Territory and it is mainly to secure the safety of the travel along these routes that a treaty is desirable.

It is not expected that the treaty will be negotiated with a view to the extinguishment of the Indian title to the land, but it is believed that with the assurances you are authorized to make of the amicable relations which the United States desires to establish and perpetuate with them, and by the payment of Twenty thousand dollars of annuities in such articles as by the President may be deemed suitable to their wants for which you are authorized to stipulate, you will be enabled to procure from them such articles of agreement as will render the routes indicated secure for travel and free from molestation; also a definite acknowledgment as well of the boundaries of the entire country they claim, as of the limits within which they will confine themselves, which limits it is hardly necessary to state should be as remote from said routes as practicable.

It must however be borne in mind that in stipulating for the payment of annuities the sum mentioned above is not to be exceeded, so that if for any reason, you are unable to treat with all the bands of the Shoshonees, the amount of annuities stipulated to be paid must be such a proportion of said sum as the number of the bands treated with bears to the number of the entire nation.

It will also be well so to frame the treaty that while on the one hand it is expressed that the United States being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of the game along the route traveled by whites, are willing to fairly compensate them for the same, the Indians on the other hand shall acknowledge the reception of the annuities stipulated for, as a full equivalent therefor, and shall pledge themselves at all times hereafter to refrain from depredations and maintain peaceable relations with the United States and their citizens.

Should you find it impracticable to make one treaty which will secure the good will and friendship of all

the tribes or bands of Shoshonee Indians, you will then negotiate only with that tribe or band which is most dangerous to emigrants and settlers upon the route of travel to the Pacific, which has the largest amount of travel over it. Although the safe transmission of the mails is an important object yet it is less important than the preservation of the lives of the emigrants.

If therefore you shall find it impracticable with the means at your disposal to make a treaty which shall afford complete protection to the route of travel over which the mails are carried and also the overland route of travel north of that, and you can only secure protection for one of said routes, you will negotiate a treaty with such tribe or bands as will secure that protection to the route over which the largest amount of travel and emigration passes without reference to the mails.

I have to direct that you arrange the times and places of your councils with the Indians that so far as practicable the entire nation shall be represented, which it is presumed the amount appropriated will with proper economy enable you to very nearly if not completely accomplish.

Mr. Martin, one of your Commissioners having filed the necessary bond, has been entrusted with the funds and will make all such arrangements for the purchase of goods and disbursement of money as may be necessary.

7. By reason of the inability of the treaty commissioners to proceed with the performance of their mission of meeting and negotiating with the Shoshone Indians, attacks and depredations were made upon the emigrants and white settlers by some bands of the Shoshone Indians during the winter of 1862-1863 with the result that in January 1863 Colonel Connor, commanding the Military District of Utah, learning of the encampment on the bank of the Bear river in southeastern corner of Idaho of a large body of Indians composed of some of the Indians of plantiff bands, attacked them in force and killed 224; a band of Indians under Sanpitz, one of the signers of the treaty subsequently made with plaintiff bands, as hereinafter mentioned, was almost exterminated.

8. June 1, 1863, the Commissioner of Indian Affairs wrote to Mr. Doty, Superintendent of Indian Affairs for the

Territory of Utah and chairman of the Treaty commissioners, as follows:

I have to acknowledge the receipt of your letter of 30th March last in relation to the proposed Treaty with the Shoshonees.

I exceedingly regret that unforeseen circumstances have combined to cause so much delay in the attempt to effect the contemplated negotiations. From the instruction forwarded to late Special Agent Martin in February last I had reason to suppose that fund would be at the disposal of yourself and Agent Mann so that a council with the Indians could be held early in the Spring. In this however I was disappointed as late Agent Martin returned bringing with him the unexpended balance of the funds entrusted to him.

An answer to your letter has been delayed some days with a view to consulting with Gov. Nye (who has been expected in this City) in relation to the Treaty. As it is now probable that Gov. Nye will not now visit this place I have to inform you that the balance of the funds returned by late Agent Martin amounting to the sum of $15,783.88 will be deposited to your credit with John I. Cisco Asst. Treas. U. S. at New York when notice shall be received from you as to the time that the negotiation will be attempted, and that the funds are needed for that purpose.

Agent Martin having wholly failed in accomplishing the object of his appointment, the negotiation will henceforth be confided to you and Agent Mann under the instructions heretofore issued, unless it shall be found practicable, and in your judgment expedient to associate with you Gov. Nye of Nevada and Gov. Wallace of the New Territory of Idaho in addition to Agent Mann, in which event you will be authorized to do so, but I suggest that no great delay, nor any considerable expense should be incurred for the purpose.

In regard to the suggestions of your letter of 27th Nov. last in relation to the necessity of treaties with the Utahs and Bannucks I have to state that you are authorized to make a joint treaty with these tribes and the Shoshones if one can be negotiated with the fund appropriated for the purpose of treating with the latter and now at your disposal. While I do not hesitate in view of the urgent necessities of the case and the weighty reasons therefor suggested by you to divert the specific application of the appropriation to the extent indicated, I do not feel warranted in attempt-

ing a negotiation with the Utahs and Bannucks in advance of an appropriation, unless it shall be found practicable to accomplish it as above indicated.

In view of the limited amount of the appropriation it is exceedingly vexatious that so much thereof should have been expended by late Agent Martin to so little purpose and that the necessity for the exercise of the strictest economy should thereby be enhanced to so great an extent. I have however full confidence that whatever is practicable will be accomplished by yourself and those who may be associated with you.

Trusting that I may receive an early and favorable report from you I remain

On June 20, 1863, Commissioner Doty wrote the Commissioner of Indian Affairs as follows:

I have the honor to acknowledge the receipt of your letter, dated May 22, 1863, in relation to my northern expedition, and to report:

That I returned to this city from that expedition on the 19th instant, having been absent six weeks in the Indian country, and travelled over eight hundred miles. I accompanied General Conner to Snake River Ferry, two hundred miles, where we separated, and he proceeded with his cavalry up the Blackfoot river, and south across the dividing ridge to Soda Springs, at which he has established a military post, on the old California and Oregon roads. The Bannacks and Shoshonees I met in small bands, and after consulting with them, I am satisfied they are disposed to be peaceable and friendly. The exhibition of a cavalry force among them apparently satisfied them that they could be reached by the power of the government, and that they would certainly be punished if they committed depredations upon white men. There are, undoubtedly, as they say, some bad men among them, who will not be controlled by the chiefs, but efforts are made by the peaceable Indians to restrain them. The only bands that appear determined to continue hostilities were those of Pokatelo, Sagowitz, and Sanpitz, and with these I could obtain no communication. They must be left to General Conner's troops.

When at Snake River ferry, two express-men arrived, bringing information that a large body of Shoshonees and Bannacks were assembled at Kamash prairie, about one hundred miles further north, on the road used by emigrants to Bannack city, with the intention to either fall upon the miners on Beaver Head and its branches,

or upon the emigrants along the road between South Pass and Bridger. If this could be prevented by an interview, I felt it my duty to make the attempt, and therefore proceeded with my interpreter to the place indicated to meet them. At Kamash prairie I found but few Indians—those remaining stating that those who had been there had gone in different directions to the mountains to hunt, and that they were all friendly to the whites, and disposed to be peaceable. They complained of the white men at Bannack city firing upon them in the streets of that place, when they were there upon a friendly visit, and molesting no one, and killed their chief, Shanog, and two others. They said they did not intend to revenge this wanton act, because it was committed by men who were drunk, and they thought all the people there were drunk at the time. I advised them not to go there again, and to keep away from drunken white men; to be kind, and render good service to the emigrants along the road, and that they would be generously rewarded. I gave them a few presents of blankets, &c. However, fearing there might be trouble from this gross attack, and that other bands might not be disposed to overlook it, I determined, as there was no Indian agent in this section of country, to proceed to Bannack city, about eighty miles distant, to ascertain the truth of their statement, and to counsel with those who might be along the road through the mountains. On entering the mountains I encountered a large band of Shoshonees, who manifested a friendly spirit, expressed a desire to be at peace, and thankfully accepted the few presents I was able to make them. On arriving at Bannack I learned with regret that the statement by the Indians of the murder of their people was true; that they were fired upon as they were sitting quietly in the street, by a dozen white men, and that their sole object in visiting the place was to give up a child—which they did—which had been demanded of them on the supposition that it was a stolen white child. I saw the child, and have no doubt that it is a half-breed, and was rightfully in their possession. I would have adopted legal measures for the punishment of these offenders, but there were no civil officers there, and no laws but such as have been adopted by miners. The matter must rest until the organization of the government of Idaho.

Whilst at Bannack, I ascertained that bands of Flat-heads had passed on the road by which I came, in search of the Bannacks and Shoshonees, for the purpose of stealing their horses and making war upon them.

Deeming it unsafe to return alone, I employed Mr. Dempsey, an excellent interpreter, to send a guide and guard of Indians with me. These accompanied me faithfully to the settlement of Box Elder, and will, on their way back, give useful information to those of their nation they meet.

All the Indians I met, during my absence, appeared desirous to form a treaty with the United States, and I told them that when the commissioners were ready to meet them I would send a runner to them to inform them of the time and place for them to assemble.

On the same date Commissioner Doty wrote to the Commissioner of Indian Affairs another letter as follows:

Your letter of instructions in relation to the proposed treaty with the Shoshones, dated June 1, 1863, I have the honor to acknowledge, and to inform you that I shall proceed the coming week to Fort Bridger for the purpose of meeting the Shoshonees who are assembled there, some of whom I met on my late expedition, and of treating with them according to your instructions of the 22d of July, 1862, and of those now given.

Many of these Indians have been hostile, and have committed depredations upon the persons and property of emigrants and settlers, but now express a strong desire for peace. Agent Mann informs me that he is now feeding them under your authority; I therefore hasten to meet them, that some arrangement may be made by which they can with satisfaction return to their hunting grounds, and upon terms which shall secure peace hereafter, safety to the emigrants and travellers, and relieve the department from the expense now being incurred.

These are about one-third of the Shoshones with whom treaties may be held, and I shall endeavor to limit the expenditures to the least amount to obtain the objects desired by government.

* * * * *

The Shoshonee Bands are scattered over so vast an extent of country that it will be necessary for the commissioners to meet them at several points. The whole nation can never be assembled without bringing them hundreds of miles.

9. Following June 20, 1863, the Government's treaty commissioners met with the Shoshone Tribe of Indians and the Bannock bands in groups at different points and on different dates between July 2 and October 14, 1863, as hereinafter

mentioned, and made treaties with them. The treaty commissioners first met at Ft. Bridger, Wyoming, with Washakie, the principal chief of the entire Shoshone Tribe of Indians, and the chiefs, principal men, and warriors of the Indians with him, where they entered into a treaty (18 Stat. 685) as follows:

Eastern Shoshone Treaty

Articles of Agreement made at Fort Bridger, in Utah Territory, this 2d day of July, A. D. 1863, by and between the United States of America, represented by its Commissioners, and the Shoshone Nation of Indians, represented by its Chiefs and Principal Men and Warriors of the Eastern Bands, as follows:

Article I

Friendly and amicable relations are hereby reestablished between the bands of the Shoshonee nation, parties hereto, and the United States; and it is declared that a firm and perpetual peace shall be henceforth maintained between the Shoshonee nation and the United States.

Article II

The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be and remain forever free and safe for the use of the government of the United States, and of all emigrants and travellers under its authority and protection, without molestation or injury from any of the people of said nation. And if depredations should at any time be committed by bad men of their nation, the offenders shall be immediately seized and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over said routes is hereby guaranteed by said nation. Military agricultural settlements and military posts may be established by the President of the United States along said routes; ferries may be maintained over the rivers wherever they may be required; and houses erected and settlements formed at such points as may be necessary for the comfort and convenience of travellers.

Article III

The telegraph and overland stage lines having been established and operated through a part of the Sho-

shonee country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said nation; and that their property, and the lives of passengers in the stages, and of the employees of the respective companies, shall be protected by them.

And further, it being understood that provision has been made by the Government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by said nation that said railway, or its branches, may be located, constructed, and operated, without molestation from them, through any portion of the country claimed by them.

Article IV

It is understood the boundaries of the Shoshonee country, as defined and described by said nation, is as follows: On the north, by the mountains on the north side of the valley of Shoshonee or Snake River; on the east, by the Wind River mountains, Peenahpah river, the north fork of Platte or Koo-chin-agah, and the north Park or Buffalo House; and on the south, by Yampah river and the Uintah mountains. The western boundary is left undefined, there being no Shoshonees from that district of country present; but the bands now present claim that their own country is bounded on the west by Salt Lake.

Article V

The United States being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by whites, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, the United States promise and agree to pay to the bands of the Shoshonee nation, parties hereto, annually for the term of twenty years, the sum of ten thousand dollars, in such articles as the President of the United States may deem suitable to their wants and condition, either as hunters or herdsmen. And the said bands of the Shoshonee nation hereby acknowledge the reception of the said stipulated annuities, as a full compensation and equivalent for the loss of game, and the rights and privileges hereby conceded.

Article VI

The said bands hereby acknowledge that they have received from said Commissioners provisions and clothing amounting to six thousand dollars, as presents, at the conclusion of this treaty.

This treaty was designated by the commissioners as an agreement with the "Eastern Bands" of the Shoshone Nation of Indians for the reason that the bands of Indians present and participating therein were located in the eastern portion of the territory inhabited or occupied by the Indians of the Shoshone Nation. Ft. Bridger, the place where the treaty was made, was located near the southwestern corner of Wyoming, east of the Porteneuf range of mountains. This treaty was transmitted to the Commissioner of Indian Affairs by the treaty commissioners with a letter of July 3, 1863, as follows:

> We have the honor to transmit herewith a Treaty which we concluded yesterday with the Shoshonee nation, which we hope will be approved by the Department. The terms were more advantageous than we had expected to obtain.
>
> The representation of the nation was very large, being from all the bands of the nation except four. The parties treating occupy the whole of the country east of—and including—Salt Lake valley. The two principal chiefs of the nation, Washakee and Wanapitz, were present.
>
> One of these absent Bands is in Ruby valley and on the Humboldt mountains and river. The other three continue their hostilities, but are now much reduced in numbers, and have been driven by the Troops north to the valley of Snake river. We may now perhaps be able to get messengers to them, and induce them to treat with us for peace.
>
> The amount expended in making this Treaty, is about six thousand dollars; the account, with the vouchers, will be forwarded without delay. There was near one thousand Shoshonees—and no Bannacks or Utahs—on the ground. They have been fed, according to your instructions, for the past month, which has somewhat increased the expenditure of the Treaty fund, to which it is charged.

10. Thereafter, on July 30, the treaty commissioners assembled at Box Elder, in Utah Territory, and met with

plaintiff bands of the Shoshone nation or tribe which inhabited and occupied the territory west of the range of mountains above mentioned and the territory occupied and possessed by Chief Washakie and the bands with whom the treaty of July 2 had been made. The commissioners there made a treaty which was signed on behalf of these Indians by Pocatello, chief of one of the bands, and eight chiefs of other bands of the Shoshone tribe. Pocatello was regarded as the principal chief under Washakie of this group of bands. These Indians were designated by the treaty commissioners and by the treaty entered into as the "Northwestern Bands" of Shoshone Indians. This treaty (13 Stat. 663) was as follows:

Northwestern Shoshone Treaty

Articles of agreement made at Box Elder, in Utah Territory, this 30th day of July, A. D., 1863, by and between the United States of America, represented by Brigadier General P. Edward Connor, commanding the military district of Utah, and James Duane Doty, commissioner, and the northwestern bands of the Shoshonee Indians, represented by their chiefs and warriors:

ARTICLE I. It is agreed that friendly and amicable relations shall be reestablished between the bands of the Shoshonee Nation, parties hereto, and the United States, and it is declared that a firm and perpetual peace shall be henceforth maintained between the said bands and the United States.

ARTICLE II. The treaty concluded at Fort Bridger on the 2nd day of July, 1863, between the United States and the Shoshonee Nation, being read and fully interpreted and explained to the said chiefs and warriors, they do hereby give their full and free assent to all of the provisions of said treaty, and the same are hereby adopted as a part of this agreement, and the same shall be binding upon the parties hereto.

ARTICLE III. In consideration of the stipulations in the preceding articles, the United States agree to increase the annuity to the Shoshonee Nation five thousand dollars, to be paid in the manner provided in said treaty. And the

said northwestern bands hereby acknowledge to have received of the United States, at the signing of these articles, provisions and goods to the amount of two thousand dollars, to relieve their immediate necessities, the said bands having been reduced by the war to a state of utter destitution.

ARTICLE IV. The country claimed by Pokatello, for himself and his people, is bounded on the west by Raft River and on the east by the Porteneuf Mountains.

This treaty was transmitted by the treaty commissioners with a letter of July 30, 1863, from Commissioner Doty to the Commissioner of Indian Affairs, as follows:

> A treaty of peace was this day concluded at this place by General Connor and myself with the bands of the Shoshones, of which Pocatello, San Pitch [Sanpitz], and Sagwich are the principal chiefs. This information is given that these Shoshones may not be injured when met by the troops, if they are at the time behaving themselves well. A treaty of peace has also been entered into at Fort Bridger with other bands of the Shoshones, and it is understood that all of that nation are at peace with the United States and are under a pledge to remain friendly.

11. Thereafter on October 1, 1863, the commissioners assembled and met with the bands of the Shoshone Nation of Indians at Ruby Valley in what is now northeastern Nevada, which Indians occupied and possessed an area of country in the northeastern portion of the territory of Nevada, and there entered into a treaty with these bands with a letter of July 30, 1863, from Commissioner Doty to the Commissioner of Indian Affairs as follows:

Western Shoshone Treaty

> Treaty of Peace and Friendship made at Ruby Valley, in the Territory of Nevada, this 1st day of October, A. D., 1863, between the United States of America, represented by the undersigned commissioners, and the Western Bands of the Shoshonee Nation of Indians, represented by their Chiefs, and Principal Men and Warriors, as follows:
>
> Article I
>
> Peace and friendship shall be hereafter established and maintained between the Western Bands of the

Shoshonee nation and the people and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States within their country, shall cease.

Article II

The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be forever free, and unobstructed by the said bands, for the use of the government of the United States, and of all emigrants and travelers under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their nation, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travelers passing peaceably over either of said routes is hereby guarantied by said bands.

Military posts may be established by the President of the United States along said routes or elsewhere in their country; and station houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travelers or for mail or telegraph companies.

Article III

The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through a part of the Shoshonee country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, and that their property and the lives and property of passengers in the stages and of the employes of the respective companies, shall be protected by them. And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by the said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of the country claimed or occupied by them.

Article IV

It is further agreed by the parties hereto, that the Shoshonee country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use, as also for building or other purposes in any part of the country claimed by said bands.

Article V

It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows:

On the north by Wong-goga-da Mountains and Shoshonee River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains; on the south by Wi-co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

Article VI

The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

Article VII

The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes traveled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, and of their faithful observance by the said bands, the United States promise and agree to pay to the said bands of the Shoshonee nation parties hereto, annually for the term of twenty

years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

Article VIII

The said bands hereby acknowledge that they have received from said commissioners provisions and clothing amounting to five thousand dollars as presents at the conclusion of this treaty.

12. Thereafter, on October 12, 1863, the treaty commissioners assembled and met with the Shoshonee-Goship Bands of Indians belonging to and affiliated with the Shoshone Nation of Indians at Tuilla Valley, just south of Great Salt Lake in what is now the northwestern portion of Utah. These bands of Indians occupied a territory lying in western Utah and eastern Nevada, south of Salt Lake and south of the territory occupied by the Northwestern Bands and east of that occupied by the Western Bands of Shoshones. This treaty (13 Stat. 681) was as follows:

Shoshonee-Goship Treaty

Treaty of peace and friendship made at Tuilla Valley, in the Territory of Utah, this 12th day of October, A. D. 1863, between the United States of America, represented by the undersigned commissioners, and the Shoshonee-Goship bands of Indians, represented by their chiefs, principal men, and warriors, as follows:

Article I. Peace and friendship is hereby established and shall be hereafter maintained between the Shoshonee-Goship bands of Indians and the citizens and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States, within their country, shall cease.

ARTICLE II. It is further stipulated by said bands that the several routes of travel through their country now or hereafter used by white men shall be forever free and unobstructed by them, for the use of the Government of the United States, and of all emigrants and travellers within it under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their own or other tribes within their country, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences may deserve; and the safety of all travellers passing peaceably over either of said routes is hereby guaranteed by said bands.

Military posts may be established by the President of the United States along said routes, or elsewhere in their country; and station-houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for the use of the mail or telegraph companies.

ARTICLE III. The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through the country occupied by said bands, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, and that their property, and the lives and property of passengers in the stages, and of the employees of the respective companies, shall be protected by them.

And further, it being understood that provision has been made by the Government of the United States for the construction of a railway from the plains west to the Pacific Ocean, it is stipulated by said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of the country claimed or occupied by them.

ARTICLE IV. It is further agreed by the parties hereto that the country of the Goship tribe may be explored and prospected for gold and silver, or other minerals and metals; and when mines are discovered they may be worked, and mining and agricultural settlements formed and ranches established wherever they may be required. Mills may be erected and timber taken for their use, as also for building and other purposes, in any part of said country.

ARTICLE V. It is understood that the boundaries of the country claimed and occupied by the Goship tribe, as defined and described by said bands, are as follows:

On the north by the middle of the Great Desert; on the west by Steptoe Valley; on the south by Tooedoe or Green Mountains; and on the east by Great Salt Lake, Tuilla, and Rush Valleys.

ARTICLE VI. The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life which they now lead, and become settled as herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary; and they do also agree to remove their camps to such reservations as he may indicate, and to reside and remain thereon.

ARTICLE VII. The United States being aware of the inconvenience resulting to the Indians, in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same. Therefore, and in consideration of the preceding stipulations, and of their faithful observance by said bands, the United States promise and agree to pay to the said Goship tribe, or to the said bands, parties hereto, at the option of the President of the United States, annually, for the term of twenty years, the sum of one thousand dollars, in such articles, including cattle for herding or other purposes, as the President shall deem suitable for their wants and condition either as hunters or herdsmen. And the said bands, for themselves and for their tribe, hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded; and also one thousand dollars in provisions and goods at and before the signing of this treaty.

13. Thereafter, on October 14, 1863, the treaty commissioners assembled and met at Soda Springs, in what is now eastern Idaho, with certain bands of Bannocks and Shoshone Indians designated by the treaty commissioners as "the mixed bands of Bannocks and Shoshonees," and entered into a treaty with them, which treaty was signed by thirteen chiefs of these bands. This treaty (5 Kapp. 693) was as follows:

Mixed Bands Treaty

Treaty of peace and friendship, made at Soda Springs, in Idaho Territory, this 14th day of October A. D., 1863, by and between the United States of America,

represented by Brigadier General P. Edward Connor, commanding the military district of Utah, &c., and James Duane Doty, commissioner, and the undersigned chiefs of the mixed bands of Bannacks and Shoshonees, occupying the valley of Shoshonee River, as follows:

Article I

It is mutually agreed that friendly and amicable relations shall be reestablished between the said Bands and the United States, and that a firm and perpetual peace shall be henceforth maintained between the said bands and the United States.

Article II

The treaty concluded at Fort Bridger, on the second day of July, 1863, between the United States and the Shoshonee nation, and also the treaty concluded at Box Elder, on the 30th day of July 1863, between the United States and the Northwestern bands of the Shoshonee nation, being read and fully interpreted and explained to the said chiefs, they do hereby give their full and free assent to all of the provisions of said treaties, and the same are hereby adopted as a part of this treaty, and the same shall be binding upon the parties hereto, the said bands sharing in the annuities therein provided for the Shoshonee nation.

Article III

The said bands, in addition, agree that the roads now used by white men between Soda Springs and the Beaver Head mines, and between Salt Lake and the Boise River mines, as also such other roads as it may be necessary or convenient for the white men to make and use between said places, or between other points within their country, shall at all times be free and safe for travel; and no depredations shall be committed upon white men in any part of their country. And the said bands hereby acknowledge to have received of the United States, by its commissioner, at the signing of these articles, provisions, and goods, to the amount of three thousand dollars, to relieve their immediate wants before their departure to their hunting grounds.

Article IV

The country claimed by the said bands jointly with the Shoshonee nation, extends, as described by them,

from the lower part of Humboldt river and the Salmon Falls, on Shoshonee river, easterly to the Wind River mountains.

14. On August 30, 1863, after the five treaties hereinbefore mentioned had been made with the Shoshone Indians, Treaty Commissioner James Duane Doty wrote the Commissioner of Indian Affairs a letter as follows:

> Acknowledging your letter dated July 22d I have to request that two or more copies of the Map lately prepared at the General Land Office may be procured and sent to me, that I may be enabled to show the boundaries of the Country ceded by the Shoshonees. The most accurate map which I have of this country is the Military Map of Utah; but this does not exhibit the northern part of the Shoshonee Country.

September 22, 1863, the Commissioner of Indian Affairs replied and transmitted copies of the map requested. November 10, 1863, Commissioner Doty wrote the Commissioner of Indian Affairs as follows:

> The map transmitted to me by the department is herewith returned, with the exterior boundaries of the territory claimed by the Shoshonees in their recent treaties, as also the lines of the country occupied by different portions of the tribe, indicated upon it as correctly as the map will allow. They fixed their eastern boundary on the crest of the Rocky Mountains; but it is certain that they, as well as the Bannacks, hunt the buffalo below the Three Forks of the Missouri, and on the headwaters of the Yellowstone and Wind rivers.
>
> As none of the Indians of this country have permanent places of abode, in their hunting excursions they wander over an immense region, extending from the fisheries at and below Salmon Falls, on the Shoshonee river, near the Oregon line, to the sources of that stream, and to the buffalo country beyond. The Shoshonees and Bannacks are the only nations which, to my knowledge, hunt together over the same ground.
>
> Replying further to your letter, dated July 22, 1863, I beg leave to refer to my letter to the Commissioner, dated February 7, 1862, in relation to the Indian tribes in this superintendency; and to add that the bands represented at the treaty of Fort Bridger, on the second day of July last, it was estimated, numbered be-

tween three and four thousand souls, over a thousand of whom were present at, and immediately after, the conclusion of the treaty.

They are known as Waushakee's band, (who is the principal chief of the nation,) Wonapitz's band, Shauwuno's band, Tibagon's band, Pecastoagah's band. Totimee's band, Ashingodimah's band, (he was killed at the battle on Bear river), Sagowitz's band, (wounded at the same battle,) Oretzimawik's band, Bazil's band, Sanpitz's band. The bands of this chief and of Sagowitz were nearly exterminated in the same battle.

The chiefs at this treaty, in fact, represented nearly the whole nation; and they were distinctly informed and they agreed that the annuities provided in this treaty, and such others as might be formed, were for the benefit of all the bands of the Shoshonee nation who might give their assent to their terms; and this has been the understanding at each treaty.

At the treaty concluded at Box Elder on the 30th of July, the first object was to effect and secure a peace with Pokatello, as the road to Beaver Head gold mines, and those on Boisé river, as well as the northern California and southern Oregon roads, pass through his country. There were present Pokatello's band, Tormontso's band, Sanpitz's band, Tosorvetz's band, Bear Hunter's band, (all but seven of this band were killed at Bear river battle,) Sagowitz's band. This chief was shot by a white man a few days before the treaty, and could not come from his *weekeeup* to the treaty ground, but he assented to all of its provisions. He and Sanpitz endeavored to be at Fort Bridger, to unite in the treaty there, but did not arrive in time. The chiefs of several smaller bands were also present and signed the treaty, which is considered of more importance than any made this season, in saving the lives and securing from depredations the property of our citizens, emigrants as well as others. These bands are generally known as "the Sheep-Eaters," and their number is estimated at one thousand.

At the treaty concluded at Ruby valley, on the 1st of October, the western Shoshonees were represented by the two principal bands, the Tosowitch (White Knife) and Unkoahs. From the best information I could get I estimated the western bands, sometimes called Shoshonee Diggers, at twenty-five hundred souls; but the bands on the Lower Humboldt and west of Smith's creek are not included in this estimate. Governor Nye proposed to meet some of them at Reese river, on his return to Carson from Ruby.

At the treaty at Tuilla valley, on the 12th of October, with the Goship or Kumumbar bands, who are connected with the Shoshonees, and are chiefly of that tribe, there were three hundred and fifty present. Others from Ibapah, Shell creek, and the Desert, would have joined them but for their fear of the soldiers; they number about one hundred more; and there is also a portion of this tribe who are mixed with the Pahvontee tribe, and occupy the southern part of the Goship country, amounting to two hundred more. They are the poorest and most miserable Indians I have met; they have neither horses nor guns. I have seen several of them at work for farmers at Deep creek and Grantsville, and therefore conclude that they would soon learn to cultivate the ground for themselves, and take care of stock, if they were assisted in a proper way. They have expressed a strong desire to become settled as farmers, and I should be glad to see them located as such, at a distance from the overland mail route. More than a hundred of them have been killed by the soldiers during the past year, and the survivors beg for peace. It was the intention and understanding that all of the Goship tribe shall participate in the benefits of the treaty.

At the treaty of Soda Springs, on the 14th of October, with the mixed bands of Shoshonees and Bannacks roaming in the valley of Shoshonee river, there were one hundred and fifty men present with their families.

Tindoah and the chiefs of several other bands sent word that they assented to the treaty, and desired to be considered parties to it, but they could not remain, as it was so late in the season they were compelled to leave for their buffalo hunting-grounds. I have seen these bands on Snake river, in the month of May last, in council, found them peaceable and friendly, and explained to them the objects for which it was proposed to hold a treaty before the snow fell.

Those now present were, Toso-kwauberaht, the principal chief of the Bannack nation, commonly known as Grand Coquin, Tahgee, Matigund, and other principal men. This last chief and his band live at the Shoshonee River ferry, where he meets all the travelers to and from the mines. He has always been friendly to them; and all of these bands can render great service to the emigrants, or do them great injury. They number about one thousand souls, as near as I can ascertain.

The whole number of Shoshonee, Goships, and Bannacks, who are parties to these treaties, may be estimated at eight thousand six hundred and fifty.

The amount to be paid to them annually in goods, &c., is—to the Shoshonees and Bannacks twenty thousand dollars and to the Goships one thousand dollars, for the term of twenty years. This last sum I think ought to be increased to two thousand dollars, especially if they are to be settled as husbandmen or herdsmen.

The importance of these treaties to the government and to its citizens can only be appreciated by those who know the value of the continental telegraph and overland stage to the commercial and mercantile world, and the safety and security which peace alone can give to emigrant trains, and to the travel to the gold discoveries in the north, which exceed in richness—at least in the quality of the gold—any discoveries on this continent.

The pertinent portion of the map referred to and transmitted by Commissioner Doty with the above-quoted letter, showing the approximate exterior boundaries estimated by him is reproduced on the following page. The word "North" has been written on the map by the court for the purpose of this opinion. The heavy line thereon was intended to represent the approximate exterior boundary of the entire territory in which the entire Shoshone tribe of Indians and the Bannock bands of Indians affiliated with them had been found to live, roam and hunt, and, to some extent, claimed or described by them as set forth in the treaties. The smaller lines on the map in the southwest portion thereof were intended to indicate approximately the territory described (1) by Pocatello, (2) the Western Bands, and (3) the Shoshonee-Goship Bands.

EXHIBIT B.—Map prepared by Dory which accompanied treaties to Senate.

15. In negotiating and making these five treaties with the various groups or bands of Shoshone and Bannock Indians, the treaty commissioners representing the United States and the Indians did not negotiate or agree with reference to the acknowledgment by the United States of any exclusive use and occupancy right or title of the Indians to the territory to the extent described or claimed by them at the request of the treaty commissioners; nor did the treaty commissioners on behalf of the United States negotiate or agree with the Indians with reference to the relinquishment by the Indians of any claim which they might make or have with

reference to any territory. It was not the purpose of the treaty commissioners to agree or acknowledge on behalf of the United States as to any rights or title to any territory or as to boundaries and they made no attempt to ascertain accurately the boundaries of any territory which the Indians may have actually occupied, possessed and used to the exclusion of other Indians or tribes of Indians. The matter of Indian use and occupancy rights or the extinguishment of any claim or right which the Indians might make or have to such use and occupancy, as a stipulation or acknowledgment in the treaties, did not enter into the negotiations and was left out of consideration in the drafting and making of the treaties in question. The primary purpose of the United States and the treaty commissioners representing it in negotiating and making the treaties in question was to bring about peaceful and amicable relations between the Government and the Indians of the Shoshone Nation, or tribe, and the Bannock bands by making provision for annuities, in stated amounts in such articles as the President might deem suitable to their wants and conditions, to the end that routes of travel by the whites through the portion of the country occupied by the Indians and the settlements therein by the whites might be free from attacks and depredations by the Indians.

16. The five treaties hereinbefore mentioned were transmitted to the President by the Secretary of Interior, and on or about January 5, 1864, the President transmitted the treaties to the Senate with the following communication:

> I herewith lay before the Senate, for its constitutional action thereon, the following described treaties, viz:
>
> A treaty made at Fort Bridger, Utah Territory, on the 2d day of July, 1863, between the United States and the chiefs, principal men, and warriors of the eastern bands of the Shoshonee nation of Indians;
>
> A treaty made at Box Elder, Utah Territory, on the 30th day of July, 1863, between the United States and the chiefs and warriors of the northwestern bands of the Shoshonee nation of Indians;
>
> A treaty made at Ruby Valley, Nevada Territory, on the 1st day of October, 1863, between the United States and the chiefs, principal men, and warriors of the Shoshonee nation of Indians;

A treaty made at Tuilla Valley, Utah Territory, on the 12th day of October, 1863, between the United States and the chiefs, principal men, and warriors of the Goship bands of Shoshonee Indians;

A treaty made at Soda Springs, in Idaho Territory, on the 14th day of October, 1863, between the United States and the chiefs of the mixed bands of Bannacks and Shoshonees, occupying the valley of the Shoshonee river;

A letter of the Secretary of the Interior, of the 5th instant; a copy of a report, of the 30th ultimo, from the Commissioner of Indian Affairs; a copy of a communication from Governor Doty, superintendent of Indian affairs, Utah Territory, dated November 10, 1863, relating to the Indians parties to the several treaties herein named; and a map, furnished by that gentleman, are herewith transmitted.

17. Each of the five treaties was ratified by the Senate, and to each of the treaties made with the Eastern Shoshones on July 2, the Northwestern Shoshones July 30, the Goship-Shoshones October 12, and the mixed bands of Bannocks and Shoshonees October 14, 1863, the Senate added the following amendment:

> Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof.

18. The treaty with the plaintiff bands as amended was ratified March 7, 1864. The amended treaty was in due course submitted to plaintiff bands and was ratified and accepted by them November 18, 1864, and proclaimed by the President January 17, 1865. 13 Stat. 663–665.

19. With the exception of the mixed bands of Bannocks and Shoshones, all of the bands of Shoshone Indians above mentioned assented to and accepted the amendment of the Senate to their respective treaties (13 Stat. 663, 13 Stat. 681, 18 Stat. 685, 18 Stat. 689). The mixed bands of Bannocks and Shoshones, with whom the treaty of October 14, 1863, was made and subsequently ratified by the Senate with the amendment above-mentioned, were never assembled for the purpose of obtaining their formal assent, apparently for the reason that they became so scattered as to render it impossi-

ble to assemble them; the treaty was therefore never proclaimed by the President.

20. The treaty with the Western Band of Shoshones, dated October 1, 1863, came up for consideration in the Senate at the same time, i. e. March 7, 1864, as the other four treaties. The Senate first voted to ratify the Western Shoshone treaty with the same amendment that was made to the other four treaties but, in the same executive session on the same date, the Senate voted to reconsider its action with respect to this particular treaty. While the other four Shoshone treaties were ratified March 7, 1864, as hereinbefore mentioned, the Senate did not take final action on the Western Shoshone treaty until June 26, 1866, at which time this treaty was ratified without amendment except for the filling in of the blank space in Art. 3 as to the amount of the annuity to be paid under the treaty to those Indians.

21. Prior to and at the time of the making and the ratification of the treaty with plaintiff bands of the Shoshone Indians, the United States had not recognized and did not, at that time, recognize a right of exclusive use, occupancy, and possession in plaintiff bands as against the United States to any territory which was within the Mexican Cession and included in that described by Pocatello, and now claimed by plaintiff bands. The treaty of July 30, 1863, with plaintiff bands contained no express or implied stipulation of recognition or acknowledgment by the United States of any right, title, or interest in any land, and the United States, in making and ratifying the treaty, did not intend that it should be a stipulation of recognition and acknowledgment of any exclusive use and occupancy right or title of the Indians, parties thereto. On the contrary, the United States has ever exercised dominion and complete ownership over the territory and land for which plaintiff bands now seek to recover compensation. The treaty was intended to be, and was, a treaty of peace and amity with stipulated annuities for the purposes of accomplishing those objects and achieving that end.

22. Subsequently the following act of Congress was approved February 23, 1865; 13 Stat. 432:

> That the President of the United States be, and he is hereby, authorized, by and with the advice and con-

sent of the Senate, to enter into treaties with the various tribes of Indians of Utah Territory, upon such terms as may be deemed just to said Indians and beneficial to the government of the United States: *Provided*, That such treaties shall provide for the absolute surrender to the United States, by said Indians, of their possessory right to all the agricultural and mineral lands in said territory except such agricultural lands as by said treaties may be set apart for reservations for said Indians: *And Provided, Further*, That all such reservations shall be selected at points as remote as may be practicable from the present settlements in Utah Territory.

Sec. 2. *And be it further enacted*, That in agreeing with said Indians upon the amounts to be paid to them under the provisions of the treaties to be negotiated in pursuance of this act, care shall be taken to obtain from the Indians, to the greatest possible extent, their consent to receive for such payments agricultural implements, stock, and other useful articles, rather than money.

Sec. 3. *And be it further enacted*, That for the purpose of negotiating said treaties and carrying out the treaty provisions of this act, making presents to said Indians, and defraying the necessary expenses incident to such negotiation, there is hereby appropriated, out of any money in the treasury of the United States not otherwise appropriated, the sum of twenty-five thousand dollars.

23. No further treaty or agreement was ever negotiated, made, or attempted to be made, with the plaintiff bands of Shoshone Indians or any of the other bands of the Shoshone Nation, or tribe, other than the Eastern bands of the Shoshone Tribe with which a treaty was made July 3, 1868, and was ratified February 16, 1869, and proclaimed February 24, 1869, 15 Stat. 673; (*Shoshone Tribe of Indians of the Wind River Reservation in Wyoming* v. *United States*, 85 C. Cls. 331). In this treaty these Eastern bands relinquished all title, claim, or rights in or to any and all territory of the United States except a portion of country described therein containing 3,047,730 acres in the Wind River section of the present State of Wyoming which was set apart by this treaty of 1868 for their absolute and undisturbed use and occupancy and for such other friendly tribes or individual Indians as, from time to time, they might be willing with the consent of the United States to admit amongst them.

24. After the making of the treaty of July 30, 1863, the plaintiff bands became widely scattered over northern Utah and Nevada, and southern Idaho. In 1873 the Commissioner of Indian Affairs appointed a commission to investigate all tribes and bands in this region and to ascertain their number and the probability of gathering them upon one or more reservations where they could be more immediately under the care of the Government. The commission made an exhaustive investigation into the matters entrusted to it and reported that it had no trustworthy information as to the number of bands of the Northwestern Shoshone Indians. The commission further reported that a part of the Northwestern Shoshones under Pocatello (who signed the treaty of July 30, 1863) had already gone to the Fort Hall (Idaho) Reservation in southeast Idaho, and that Chief Tav-i-wunshea, with his small band, had gone to the Wind River (Wyoming) Reservation created and set apart under the treaty with the Eastern Shoshones in 1868. Toomontso (who had signed the Northwestern Treaty of July 30) and his band at about this time took up their abode on the Fort Hall Indian Reservation and an indefinite number of Indians of this band had gone to the Wind River Reservation. Eventually the remnants of the bands of Indians under San Pitz (a signer of the Northwestern Shoshone treaty of July 30), and Saigwits, also a party to the treaty, were induced by the commission to remove to the Fort Hall Indian Reservation, thus making a total of 400 Northwestern Shoshone Indians on the Fort Hall Reservation. The commission further reported that a careful enumeration disclosed that there were 400 Northwestern Shoshone Indians in southern Idaho. In 1873 a number of Northwestern Shoshone Indians had gathered in northeastern Nevada and were assigned by the Indian Agent in Nevada to a small area in that section as a home. On May 10, 1877, this tract, by order of the President, was withdrawn from sale or settlement and set apart as a reservation for the Northwestern Shoshone Indians. However, in 1879, all the Indians thereon, numbering about 300, were removed to the Western Shoshone Indian Reservation known as the Duck Valley Indian Reservation in southwestern Idaho and northern Nevada.

25. Art. 3 of the treaty of July 30, 1863, with plaintiff bands stated:

> In consideration of the stipulations in the preceding articles, the United States agree to increase the annuity [$10,000] to the Shoshonee Nation five thousand dollars, to be paid in the manner provided in said treaty. * * *.

Following the final ratification of this treaty with plaintiff bands, there was appropriated by Congress for the "Northwestern Bands of Shoshones" annually for twenty years the sum of $5,000, as stipulated in the treaty of July 30, 1863, with plaintiffs. The total so appropriated for the years 1865 to 1884, inclusive, for plaintiff bands was $100,000. The sums so appropriated, together with the sums appropriated for the Western bands and the Shoshonee-Goship bands of the Shoshone Tribe, were carried on the books of the Treasury under the heading "Fulfilling treaty with Shoshones." In the Indian Office, however, the sums appropriated for the "Northwestern Bands of Shoshones" for the first 18 instalments were carried on subsidiary ledgers under the heading "Fulfilling treaty with Shoshones, Northwestern Bands." Of the sum of $90,000 appropriated for the first 18 instalments and credited to this fund on the ledgers of the Indian Office, a total of $77,195.83 was expended for annuity goods for plaintiff bands leaving a deficiency of $12,804.17. However, the amount of $2,000 of this deficiency was subsequently recovered from Agent How and credited to the fund "Fulfilling treaty with Shoshones," which was a fund applicable to the fulfillment of the treaty stipulations with plaintiff bands and other bands of the Shoshones.

The last two treaty appropriations for the fiscal years 1883 and 1884 of $5,000 each for plaintiff bands, $5,000 each for the Western bands, and $1,000 each for the Goship bands, totaling $22,000, were carried under the control appropriation "Fulfilling treaty with Shoshones." No attempt was made by the Government's accounting officers to apportion the expenditures out of this fund among these bands, which appears to have been due to the fact that by this time the identity of the Shoshone Indians which had been known as the "Northwestern Bands" upon the Western Shoshone Res-

ervation and other reservations, as hereinbefore mentioned, had been practically lost. This fund of $22,000 was supplemented by various amounts aggregating $3,861.78, in which amount was included the sum of $67.50, being an unexpended balance from the fund "Fulfilling treaty with Shoshones, Northwestern Bands," and the $2,000 recovered from Indian Agent How from advances made to him, making a total of $25,861.78 available under the appropriations and in the accounts of the Government for disbursement pursuant to the treaties with the Northwestern, Western, and Goship-Shoshone bands of the Shoshone Tribe of Indians. A total of $25,728.67 was disbursed out of this fund for treaty goods at the Western Shoshone Agency in Nevada under the appropriation "Fulfilling treaty with Shoshones" without distinction or segregation of the accounting records as to the amounts of money disbursed for goods for each group of the Northwestern, Western, or Shoshone-Goship Indians. The treaty goods and provisions purchased with the money appropriated for each group of bands were disbursed to the Indians of the bands entitled thereto. The full amount of annuity appropriations for these bands of Shoshones was exhausted in 1894.

The deficiency in the disbursement of annuity appropriations for treaty goods and provisions due plaintiff bands from the total of $100,000 appropriated by Congress for this purpose is $10,804.17.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff bands of Shoshone Indians are not entitled to recover under the treaty of July 30, 1863, as for a taking by the United States of any portion of the 15,643,000 acres of land for which compensation is herein claimed.

The court further concludes as a matter of law that plaintiff bands are entitled under Art. 3 of the treaty of July 30, 1863, to recover ten thousand eight hundred four dollars and seventeen cents ($10,804.17) subject to deduction of offsets, if any, under the terms of section 3 of the Jurisdic-

tional Act, which offsets, if any, are reserved for determination as provided in Rule 39 (a).

OPINION

LITTLETON, *Judge*, delivered the opinion of the court:

Section 1 of the Jurisdictional Act (45 Stat. 1407) provides as follows:

> That jurisdiction be, and hereby is, conferred upon the Court of Claims, notwithstanding lapse of time or statutes of limitations, to hear, adjudicate, and render judgment in any and all claims which the northwestern bands of Shoshone Indians may have against the United States arising under or growing out of the treaty of July 2, 1863 (18 Stat. 685, 2 Kappler 848); treaty of July 30, 1863 (13 Stat. 663, 2 Kappler 850); Act of Congress approved December 15, 1874 (18 Stat. 291), and any subsequent treaty Act of Congress, or Executive order, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

The treaty of July 2, 1863, mentioned above, was with the Eastern bands of the Shoshone Nation, and is set forth in finding 9. The treaty of July 30, 1863, was with plaintiff bands of the Shoshone Nation, and is set forth in finding 10. The act of Congress approved December 15, 1874 (18 Stat. 291, 292), was an act ratifying an agreement of September 26, 1872, with the Eastern bands of the Shoshone Indians ceding to the United States a portion of a reservation in the Wind River Valley of Wyoming set apart for the exclusive use and occupancy of said Eastern bands by the treaty with them of July 3, 1868. The plaintiff bands were not parties to the treaty of 1868 or the agreement of 1872. See 85 C. Cls. 331. The act of December 15, 1874, had no reference to the treaty of July 30, 1863, with plaintiff bands and did not affect that treaty, or any of the territory claimed in this proceeding. There were no treaties or acts of Congress subsequent to the treaty with plaintiff bands of July 30, 1863, other than the act of February 23, 1865, 13 Stat. 432, set forth in finding 22, which made reference to any part of the territory in which was located any of the land for which plaintiff bands herein make claim for compensation.

In order to recover in this case, plaintiff bands must show that in the treaty with them of July 30, 1863, or in the treaty of July 2, 1863, with the Eastern Bands of the Shoshone Nation, which was made a part of the treaty with plaintiff bands, the United States, acting through the appropriate officials of the Department of Indian Affairs, the treaty commissioners, who negotiated and made the treaty with these bands, the President, and the Senate expressly or by necessary implication recognized, acknowledged, and conceded under the terms of these treaties the exclusive possessory use and occupancy right or title of plaintiff bands of the Shoshone Indians as against the United States in the whole or some part of the territory of 15,643,000 acres of land for which they now make claim for compensation as for a taking in violation of that treaty of July 30, 1863.

The question whether under the Mexican laws at the time of the Mexican Cession of 1848 plaintiff bands had use and occupancy rights—that is, "Indian title"—to certain of the land involved in this case based upon aboriginal possession or occupancy to the exclusion of other Indian tribes has been decided adversely to the defendant's contention in this case in *United States of America, as Guardian of the Indians of the Tribe of Hualpai in the State of Arizona* v. *Santa Fe Pacific Railroad Co.*, 314 U. S. —, decided December 8, 1941. That was a suit by the United States, as guardian of the Hualpai (Walapais) Indians, for an accounting by the Railroad Company for all rents, issues and profits derived from the leasing, renting, or use of the lands subject to right of occupancy by the Indians, and the court said:

> Basic to the present causes of action is the theory that the lands in question were the ancestral home of the Walapais, that such occupancy constituted "Indian title" within the meaning of section 2 of the 1866 Act, which the United States agreed to extinguish, and that in absence of such extinguishment the grant to the railroad "conveyed the fee subject to this right of occupancy." *Buttz* v. *Northern Pacific Railroad*, 119 U. S. 55, 66. * * *
>
> Occupancy necessary to establish aboriginal possession is a question of fact to be determined as any

other question of fact. If it were established as a fact that the lands in question were, or were included in, the ancestral home of the Walapais in the sense that they constituted definable territory occupied exclusively by the Walapais (as distinguished from lands wandered over by many tribes), then the Walapais had "Indian title" which unless extinguished survived the railroad grant of 1866. *Buttz* v. *Northern Pacific Railroad*, *supra*.

"Unquestionably it has been the policy of the Federal Government from the beginning to respect the Indian right of occupancy, which could only be interfered with or determined by the United States." *Cramer* v. *United States*, 261 U. S. 219, 227. * * * Whatever may have been the rights of the Walapais under Spanish law, the *Cramer* case assumed that lands within the Mexican Cession were not excepted from the policy to respect Indian right of occupancy. * * *

Plaintiff bands contend that in their treaty of 1863 the United States recognized, acknowledged, and conceded their aboriginal use and occupancy right or title to the territory within and without the Mexican Cession and that no action of the United States has ever extinguished this occupancy right or title.

The defendant contends that there was no such acknowledgement in this treaty by the United States of the exclusive use and occupancy title of plaintiff bands to any portion of the lands claimed by them as against the Government, but that the treaty was intended to be, and was, a treaty of peace and amity with stipulations for annuities in goods and provisions for the Indians, parties to the treaties, in return for such peace and amity by the ending of attacks upon settlers and depredations committed in the territory inhabited and roamed over by them, and upon the white emigrants passing through such country on the overland trails to California, Oregon, and the mining regions of Idaho and Montana.

We are of opinion from a careful consideration of the treaties of July 2 and July 30, 1863, in the light of the facts and circumstances disclosed by the record and the history of the times before and after the treaties with plaintiff bands and other bands of the Shoshone nation or tribe of Indians, that the defendant's contentions are correct and

that the United States did not in the treaty with plaintiff bands recognize or acknowledge the use and occupancy right or title in plaintiff bands as against the Government to the whole or any portion of the territory now claimed by them. On the contrary, the record compels the conclusion that the United States has ever exercised dominion and complete ownership over the territory for which plaintiff bands now make claim. No subsequent treaty or agreement was ever made with plaintiff bands.

At the outset it should be stated that the fact that plaintiff bands may have inhabited, claimed, possessed, and occupied the whole or a part of the territory of 15,643,000 acres of land now claimed by them to the exclusion of other tribes of Indians, and with the recognition of the other tribes, would not entitle plaintiff bands here successfully to maintain the claim involved in this suit or authorize the court to enter judgment thereon based on immemorial or aboriginal possession and occupancy. *Hayt, Administrator,* v. *United States*, 38 C. Cls. 455, 462; *Duwamish et al. Tribes of Indians* v. *United States*, 79 C. Cls. 530, 599, 600. Cf. *Coos Bay Indian Tribes et al.* v. *United States*, 87 C. Cls. 143; *The Wichita and Affiliated Bands of Indians in Oklahoma et al.* v. *United States*, 89 C. Cls. 378, 420. The jurisdictional act does not embrace such a claim independent of the treaty of July 30, 1863; therefore, unless the defendant by this treaty recognized and acknowledged that the plaintiff bands had exclusive possessory use and occupancy title, they are not entitled to recover as for a taking by the United States. The fact that the treaties of July 2 with the Eastern bands and of July 30 with plaintiff bands did not contain any express provision or language with reference to the matter of extinguishment of any claim, right, title, or interest of the Indians in respect of the territory inhabited by them does not establish that, by the treaty, the United States recognized and acknowledged the existence of such right or title as against its own title. Without doubt the United States had the unquestioned right to exercise complete dominion and ownership of the territory in which plaintiff bands were found in and prior to 1863. In *United States of America, as Guardian, etc.*, v. *Santa Fe Pacific Rail-*

road Co., supra, the court in referring to rights and title of Indian tribes based on aboriginal possession, use, and occupancy said—

> Nor is it true, as respondent [Railroad] urges, that a tribal claim to any particular lands must be based upon a treaty, statute, or other formal government action. As stated in the *Cramer* case, "The fact that such right of occupancy finds no recognition in any statute or other formal governmental action is not conclusive." 261 U. S. at 229.

In speaking with reference to the matter of extinguishment of Indian title, the court further said:

> Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method, and time of such extinguishment raise political, not justiciable issues. *Buttz* v. *Northern Pacific Railroad*, *supra*, p. 66. As stated by Chief Justice Marshall in *Johnson* v. *M'Intosh*, *supra*, p. 586, "the exclusive right of the United States to extinguish" Indian title has never been doubted. And whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts. *Beecher* v. *Wetherby*, 95 U. S. 517, 525.

In and prior to 1850 the Government had practically no knowledge with reference to the Indians inhabiting the country which became southern Idaho, eastern Oregon, northern Nevada, and northern Utah or of any particular areas occupied by any particular tribes or bands, and knew very little as to tribal distinctions. From 1849 until 1863, when the five treaties mentioned in the findings were made with the different bands of Indians of the Shoshone nation or tribe, and subsequently, the Government Indian agents and superintendents of Indian Affairs in Washington and Utah territories, in which the States of Idaho, Nevada, Utah, and Wyoming now are located, acquired in their travels and contacts with the Indians some information as to the locations of various bands of these Indians and the area in which they lived and over which they roamed and hunted, but such information was general in character and indefinite as to boundaries of specific areas and, also, as to specific

bands or individual Indians of specific tribes. The Utah Superintendency of the Indian Department was located at Salt Lake and the agents and representatives of the Government at this superintendency made various trips among the Indians in that territory and westward, across what is now Nevada, in the vicinity of white settlements and along the overland trails to California, Oregon, and Idaho. The overland trail to California passed through the territory then occupied by the Eastern bands of Shoshones in what is now the southwestern portion of Wyoming and the northeast corner of Utah, through the territory occupied by plaintiff bands in what is now northeast Utah and southeast Idaho, through the territory occupied by the bands of Bannocks and Shoshones in northeast Idaho, the Goship-Shoshone bands in western Utah below Salt Lake, and the Western bands of the Shoshones in northeast Nevada. The main California trail came through southwest Wyoming over the mountains into northeast Utah north of Great Salt Lake and across that portion of Utah to Nevada and south, in Nevada, to the Humboldt River and along that river westward across that state to California.

The Shoshone Tribe of Indians and the various bands thereof, with a few exceptions hereinafter mentioned, desired to be and were peaceful and friendly to the whites and the Government. The Shoshone nation, or tribe, as such, has never made war upon the United States or the white settlers. The bands of Shoshone Indians inhabiting the territory which became northern and western Utah, southern Idaho and northeastern Nevada were poor; the territory in which they lived was mostly desert country, and there was only a sparse supply of game and food. The white emigrants and settlers during the period from 1849 to 1863 practically destroyed the source of livelihood of the Shoshone Band of Indians in this territory. The result of this was that a number of Indians of the Northwestern Bands, and perhaps some of the other bands, made attacks upon the white settlers and emigrants and committed depredations from time to time up to January 1863. The record shows that the Indian agents and some of the military representatives of the Government traveling through a portion

of the territory in which these Indians were found gave the various Indians, as far as they were able so to do, some provisions and supplies as presents for the purpose of endeavoring to end these attacks and depredations. The agents found that all the Indians desired peace but they were strong in their protestations of the destruction of their means of livelihood and begged the Government agents to bring them presents and provisions. The agents found and from time to time reported to the Commissioner of Indian Affairs, and the Commissioner of Indian Affairs reported to Congress in his annual reports that these Indians were practically in a starving condition by reason of destruction of their source of food and that they were desirous of peace; that the attacks and depredations were doubtless being committed because of their condition and because they deemed it necessary to "steal or starve." The record also shows that the acts and conduct of certain unscrupulous whites also contributed to depredations by some of the Indians.

The Secretary of Interior and the Commissioner of Indian Affairs constantly recommended to Congress that some provision be made for assistance to and care of these Indians and that an appropriation be made and authority granted to negotiate treaties with them with a view to bringing about a permanent peace. It was not, however, until the enactment of a provision in the Appropriation Act of July 5, 1862, 12 Stat. 512, 529, that Congress made any appropriation for the assistance of these Indians or authorized the negotiation of a treaty with them. In that act Congress appropriated $20,000 "for defraying the expenses of negotiating a treaty with the Shoshonees or Snake Indians, * * *, to be expended under the direction of the Secretary of the Interior." The Secretary of the Interior had asked for $45,000, but Congress evidently thought that $20,000 would be sufficient to secure a treaty of peace. (See finding 4.)

Treaty commissioners were duly appointed and given instructions as set forth in finding 5. There was delay on the part of the commissioners in communicating to the Indians the intention of the Government to negotiate with them for peace and for payment of annuities, with the result

that the attacks and depredations continued. Early in January 1863 the military authorities in the District of Utah learned of the encampment on Bear River, in the southeast corner of Idaho, of a large body of Indians from the Northwestern Bands and attacked this group of Indians in force and killed 224 of them. Thereafter, on or before June 1, 1863, the treaty commissioners, the chairman of which group was James Duane Doty, then superintendent of Indian Affairs for the Territory of Utah, began their work of negotiating with the Indians. The commissioners concluded that it would be best to meet and negotiate with the various bands of the Shoshone tribe in groups at different points for the reason that "The Shoshone bands are scattered over so vast an extent of country that it will be necessary for the commissioners to meet them at several points. The whole nation can never be assembled without bringing them hundreds of miles." Most of the bands of this tribe, other than the Eastern bands, were without horses or other means of transportation. After the making of these treaties and the furnishing of annuities in goods and provisions, the Indians remained peaceful and did not cause the United States or the white settlers any serious trouble.

The territory ceded to the United States by Mexico February 2, 1848, under the treaty of Guadalupe Hidalgo, 9 Stat. 922, 929, added to the United States the area of what is now California, Nevada, Utah, Arizona, New Mexico, and a part of Colorado. Of the total of 15,643,000 acres of land claimed by plaintiff bands in this proceeding, 9,576,000 acres are located in Utah and Nevada within the Mexican Cession; the balance, or 6,067,000 acres, is located in southeast Idaho. Of the 25,197,000 acres described by the Eastern Bands of Shoshone Indians in the treaty with them of July 2, 1863, 7,552,000 acres are located in what is now northwest Colorado and northeast Utah, within the Mexican Cession, and the balance of 17,644,000 acres is located in what is now Wyoming and Idaho. All of the territory inhabited and described by the Goship-Shoshone Bands of Indians in the treaty with them of October 12, 1863, was located within the Mexican Cession, as was all the territory inhabited and described by the Western Bands of

Shoshones in their treaty of October 1, 1863. All the territory which the treaty commissioners indicated as being inhabited by the Mixed Bands of Bannocks and Shoshones was entirely within what is now northeast Idaho and western Wyoming, no part of which is in the territory of the Mexican Cession.

In the Act of September 30, 1850 (9 Stat. 544, 558), Congress made an appropriation of $20,000 "to enable the President to hold treaties with the various Indian tribes in the State of California." (Cf. Act of June 5, 1850, 9 Stat. 437, and page 555, paragraph 12, of the Act of September 30, 1850, *supra.*)

Eighteen separate treaties were negotiated between March 19, 1851, and January 7, 1852, with some of the tribes and bands of Indians in California. These treaties with the Indians of California were submitted to the Senate by the President on June 1, 1852, for action, and on July 8, 1852, the Senate by unanimous vote adopted a resolution on each treaty refusing to give its consent thereto. This action of the Senate was due to the fact that at that time it did not desire to recognize in the Indians any possessory use or occupancy right, title or interest as against the United States to any specific lands for the reason that the United States in acquiring the territory from Mexico succeeded to all rights in the soil, possessory and otherwise, and the Government regarded itself as the absolute and unqualified owner; that since the Indians had no possessory, occupancy, or other rights therein which were to be in any manner respected, the United States was under no obligation to treat with the Indians occupying the same for the extinguishment of their title. The Executive Department and the Senate had that policy or attitude in mind in 1863 and 1864 when the treaty with plaintiff bands of the Shoshone Indians was negotiated, made, and ratified with the amendments hereinafter mentioned.

The treaty of July 30, 1863, with plaintiff bands and the treaty of July 2, 1863, with the Eastern Bands of the Shoshone Nation (findings 9 and 10) were ratified with the following amendment added by the Senate:

> Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the

lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof.

All the remaining treaties with the various bands of the Shoshone Tribe of Indians were ratified with like amendment March 7, 1864; however, action on the treaty with the Western Band of Shoshone Indians was reconsidered by the Senate on the same day and final action thereon was taken on June 26, 1866, more than two years later, when the same was ratified without amendment, other than the filling in of the blank space therein as to the amount of the annuity of $5,000 per annum for twenty years. Why the amendment above quoted, which was added to the other treaties, was first added to the Western Shoshone treaty but finally left out when the treaty was subsequently ratified does not appear; but we think that has no important bearing upon the question of rights of plaintiff bands under their treaty. A subsequent change of attitude or policy toward these Indians would not, without more, constitute a recognition or acknowledgment of title by a prior treaty which did not disclose such an acknowledgment. In view of the position thus taken by the United States, we think it cannot be said that the treaty with plaintiff bands recognized and acknowledged any right, title, or interest in them to the territory which they may have occupied or to which they now make claim. Although the plaintiff bands, insofar as other tribes were concerned, may have exclusively occupied and used all or a portion of the territory involved in their present claim as their aboriginal home (and the record is sufficient to show that they did), they are not entitled to recover for the reason that the jurisdictional act only authorizes this court to consider, adjudicate, and render judgment on a claim "arising under or growing out of the treaty" with them. Such a claim must be one that is within the terms of and supported by the provisions of the treaty. Aboriginal occupancy and use is not such a claim. The record shows and we have found as a fact that the United States has never recognized, either at the time the treaty of July 30 was made, or subsequently, a right of exclusive occupancy in plaintiff bands to the territory claimed

by them but that it has ever exercised complete dominion over the territory, and this is one method, or manner, so far as the present authority of the court to adjudicate is concerned, of extinguishing Indian title. *United States* v. *Santa Fe Pacific R. R. Co., supra.*

Moreover, in addition to what has hereinabove been said, the facts disclosed by the official records and communications of the Government show that it was not the intention of the Executive Department of the Government at the time of making the treaties with the Shoshone Indians in 1863 to stipulate and agree in such treaties either in favor of or against any use or occupancy claim of the Indians. The treaties were intended to be, and we think they are, treaties of peace and amity because the Government had very little reliable information as to the territory actually occupied by these Indians. The treaty commissioners were therefore given specific instructions, among others, not to undertake negotiations with the view to extinguishment of any Indian title to land. We think the effect of these instructions, together with others which followed (finding 6), was that the treaty commissioners were not to stipulate with reference to the recognition and acknowledgment on the part of the Government of any exclusive use and occupancy title of the Indians to the land. Judging by what was done, we think the treaty commissioners so understood their instructions. The commissioners therefore simply wrote into the various treaties the statements made by different groups or bands as to the "country described" or "claimed" by them, which descriptions by the Indians were very general and rather indefinite. Especially was this true in connection with the treaty of July 30 with plaintiff bands. In this treaty Chief Pocatello, of one of the bands, mentioned only the Raft River and the Porteneuf Mountains in describing the territory "claimed for himself and his people," and nothing was said with reference to the northern or southern boundaries and nothing whatever with reference to an additional territory of 6,255,000 acres of land now claimed by plaintiff bands lying wholly west of Raft River. Art. 4 of the treaty with plaintiff bands therefore simply stated: "The country claimed by Pokatello, for himself and his people, is bounded on the west by Raft River and on the

east by the Porteneuf Mountains." The purpose of obtaining a description of territory from the Indians was, as the letter of instructions of July 22, 1862, stated, to obtain as much information as possible as to what territory the Indians *claimed*, because the Government had no information in that regard from the Indians themselves, and very indefinite information otherwise as to the territory which they occupied.

We do not think the amendment added by the Senate constituted a recognition and acknowledgment of exclusive use and occupancy right or title by the Indians. That amendment did not have any relation to any territory not within the Mexican Cession. As to such territory mentioned in the treaty as fell within the Mexican Cession, the amendment was simply a limitation on the right or title of the Indians based on aboriginal occupancy, if, as a matter of law, there was such a limitation under Mexican law in 1848. Without the amendment the treaty did not admit or deny aboriginal occupancy, nor did it acknowledge the right of exclusive use and occupancy as against the United States. The amendment therefore added nothing to the treaty in this respect.

In 1939 the General Land Office prepared a map based on more accurate information which followed the general outlines roughly indicated by Commissioner Doty on the map (finding 14) which accompanied the treaties and this 1939 map also showed the boundaries to the extent mentioned in the various treaties. After indicating the exterior boundaries within the general outlines shown on the Doty map, the Government computed the acreage therein. The entire area embraced within the general exterior lines shown on the Doty map which accompanied the treaty, as corrected and computed on the 1939 map, comprised 80,825,000 acres of land. The entire population of the Shoshone tribe and affiliated Bannock bands of Indians in 1863 was between 9,000 and 10,000; the population of the Eastern bands was about 4,500; that of the Northwestern Bands, about 1,800; that of the Western bands, about 2,000; and that of the Goship-Shoshone Bands, about 1,000. The number of Bannocks, or the Mixed Bands of Bannocks and Shoshones not

included in the above-mentioned population of the Eastern Bands, was about 400. No census was taken by the agents of the Government; these figures as to population are approximate.

Upon the whole record we are of opinion that plaintiff bands are not entitled to recover under the treaty of July 30, 1863, as for a taking by the United States of any land for the reason that the defendant did not, in the treaty, set aside any specific area for the exclusive use and occupancy by plaintiffs, and did not, by the treaty, recognize or acknowledge any exclusive use and occupancy right and title of the Indians to the whole or any portion of the acreage here claimed. In reaching this conclusion we have not departed from the rules to be followed in the interpretation of treaties with the Indians, as set forth in *Jones* v. *Meehan*, 175 U. S. 1; *United States* v. *Winans*, 198 U. S. 371; *Choctaw Nation* v. *United States*, 119 U. S. 1, 21; *Choctaw Nation* v. *United States*, 179 U. S. 494, 531–534; *Carpenter et al.* v. *Shaw*, 280 U. S. 363, 365; *Blackfeet et al. Tribe* v. *United States*, 81 C. Cls. 101.

Plaintiff bands claim that the defendant failed to fulfill the promises which it made in the treaty with reference to the annuity of $5,000 per annum for twenty years, totaling $100,000. This entire amount was appropriated by Congress in twenty annual instalments and the record satisfactorily shows that the total of the amount so appropriated except $10,804.17 was expended and disbursed by the Government in goods and provisions for the Indians of the Northwestern Bands. How and why the deficiency of $10,804.17 in the annuity goods due the Indians of the Northwestern Bands came about does not appear and the Government records do not disclose what became of this sum. After the treaty of July 30 with plaintiff Indians, band affiliations became practically lost. Some of these Indians went to the Wind River Reservation with the Eastern Band of Shoshones, some to the Fort Hall Indian Reservation in Idaho, some to the Western Shoshone or Duck Valley Indian Reservation in southwestern Idaho and northern Nevada, and an indefinite number of individual Indians of the Northwestern Bands continued to roam and live in northern Utah and southern Idaho and worked at times for white settlers.

Whether this balance of $10,804.17 was not expended and disbursed in annuity goods for the Northwest Shoshone Indians because they were so scattered or whether the appropriation lapsed and the fund reverted to the Treasury does not appear. Plaintiff bands have submitted no proof to show that the defendant took this money for its own use or took it from plaintiff bands and gave or expended it for Indians other than the Indians of the Northwestern Bands.

Plaintiff bands are entitled to recover this sum of $10,804.17 to the extent that it may exceed any allowable offsets to which the defendant may show itself entitled under section 3 of the Jurisdictional Act on further proceedings under Rule 39(a). But plaintiff bands are not entitled to recover interest on this deficiency in the treaty annuities from the years in which the last two of the twenty annuity instalments were due, for the reason that the record does not establish that this money was taken by the United States under such circumstances as would entitle the plaintiff bands to interest as a part of just compensation. *The Choctaw Nation* v. *United States*, 91 C. Cls. 320, 402, 403.

The claim of plaintiffs for compensation as for a taking by the defendant of lands is dismissed, and an interlocutory order under Rule 39(a) is hereby entered reserving the determination of the amount of recovery, if any, in respect of the amount of $10,804.17 after determination of the amount of offsets, if any, for further proceedings. It is so ordered.

MADDEN, *Judge*; JONES, *Judge*; WHITAKER, *Judge*; and WHALEY, *Chief Justice*, concur.

A true copy.
Test:

Chief Clerk, Court of Claims of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1942

[fols. 89-90] JUDGMENT OF THE COURT UNDER RULE 39(a)—March 2, 1942

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff bands of Shoshone Indians are not entitled to recover under the treaty of July 30, 1863, as for a taking by the United States of any portion of the 15,643,000 acres of land for which compensation is herein claimed.

The court further concludes as a matter of law that plaintiff bands are entitled under Art. 3 of the treaty of July 30, 1863, to recover ten thousand eight hundred four dollars and seventeen cents ($10,804.17) subject to deduction of offsets, if any, under the terms of section 3 of the Jurisdictional Act, which offsets, if any, are reserved for determination as provided in Rule 39 (a).

[fols. 91-92] FINAL SUBMISSION OF CASE ON MERITS

On December 6, 1943, the case was submitted on merits, without argument, by Mr. Ernest L. Wilkinson for plaintiff, and by Mr. George T. Stormont for defendant.

[fol. 93] ADDITIONAL SPECIAL FINDINGS OF FACT, CONCLUSION OF LAW, AND OPINION BY LITTLETON, J.—Filed January 3, 1944.

Mr. Ernest L. Wilkinson and *Mr. Herman J. Galloway* for the plaintiffs.

Mr. Joseph Chez, Mr. Charles J. Kappler, Mr. Frank K. Nebeker, and *Mr. Clinton D. Vernon* were on the brief.

Mr. George T. Stormont, with whom was *Mr. Assistant Attorney General Norman N. Littell,* for the defendant.

Mr. Raymond T. Nagle was on the brief.

This case is now before the court on accounting under Rule 39 for additional findings of fact and final judgment with reference to proper offsets, under the jurisdictional act, against plaintiff bands, with respect to the amount of $10,804.17 found by the court to be due plaintiffs in the findings of fact (finding 25) and opinion promulgated March 2, 1942.

Additional Special Findings of Fact

1. During the period from July 1, 1863, to June 30, 1878, the United States expended gratuitously out of its public funds for the use and benefit of the plaintiff bands the following specific sums for the following purposes as shown, among other expenditures, on page 44 of the accounting report of the Comptroller General filed as evidence herein.

Livestock	$525.00
Pay of Interpreters	64.40
Provisions and other rations	2,277.95
Transportation, etc., of supplies	6,614.12
	9,481.47

[fol. 94] During the period from July 1, 1863, to June 30, 1878, the United States expended gratuitously out of its public funds for the use and benefit of the plaintiff bands jointly with other Shoshones the following sums for the following purposes only, as shown on page 45 of the Comptroller General's accounting report filed as evidence herein:

Medical attention	$280.00
Provisions and other rations	601.34
Repairing guns	937.11
Transportation, etc., of supplies	851.56
	2,670.01

One-half of said sum of $2,670.01, to wit, $1,335.01, was expended for the benefit of the plaintiff bands.

2. The specific amounts of gratuitous expenditures made by defendant on behalf and for the benefit of the plaintiff bands as set forth in the preceding finding have been agreed upon and stipulated by the parties as proper offsets against the amount of $10,804.17 heretofore found by the court to be due plaintiff bands by defendant.

Conclusion of Law

Upon the foregoing additional findings of fact and the findings of fact made and promulgated March 2, 1942, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff bands are not entitled to

recover. It is, therefore, adjudged and ordered that the petition be dismissed.

OPINION

LITTLETON, JUDGE, delivered the opinion of the court.

Upon a stipulation of facts filed by the parties with reference to certain items of gratuitous expenditures by defendant on behalf of plaintiff bands, which expenditures are disclosed in an accounting report of the Comptroller General filed as evidence herein, the court has made additional findings with reference to offsets, as required by the jurisdictional act, to the extent necessary by reason of the finding and decision of March 2, 1942, that defendant owed plaintiff bands the sum of $10,804.17.

[fols. 95-96] The parties hereto stipulate and agree and the court now holds that in the event of further litigation between the parties, either in this suit or under the present or a similar jurisdictional act, the finding of the specific amounts of offsets herein, totaling $10,816.48, shall not operate for or against the assertion by defendant, as proper offsets against any judgment recovered by plaintiff bands, of other items of disbursement, including expenditures of the same kind or quality as those set forth in the finding herein, made by defendant for the benefit of the plaintiff bands.

The total of the specific offsets found herein to be proper offsets under the terms of the jurisdictional act exceed the amount which the court has found to be due plaintiff bands by defendant. Plaintiffs are, therefore, not entitled to a judgment against the defendant and the petition is dismissed. It is so ordered.

Madden, Judge; Whitaker, Judge; and Whaley, Chief Justice, concur.

Jones, Judge, took no part in the decision in this case:

[fols. 97-98] FINAL JUDGMENT OF THE COURT—January 3, 1944

Upon the additional findings of fact and the findings of fact made and promulgated March 2, 1942, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff bands are not entitled to recover.

It Is Therefore Adjudged And Ordered that the petition be and the same is hereby dismissed.

[fols. 99-100] PROCEEDINGS AFTER JUDGMENT

On March 25, 1944, the plaintiff filed a motion for an extension of time to April 14, 1944, to file a request for record in re certiorari together with parts of the record so requested and a petition for Writ of Certiorari, and said motion was allowed by the court on the same day.

On April 8, 1944, the plaintiff filed a request for record in re certiorari together with parts of the record so requested and a petition for writ of certiorari, as follows:

[fols. 101-102] PLAINTIFF'S APPLICATION FOR TRANSCRIPT OF RECORD—Filed April 8, 1944

To the Clerk of the United States Court of Claims:

The Northwestern Bands of Shoshone Indians, the plaintiffs above named, intend without unnecessary delay to file a petition to the Supreme Court of the United States for a writ of certiorari in the above-entitled case.

Plaintiffs hereby apply for a certified transcript of the record in said case, consisting of the following:

1. The pleadings.

2. Findings of fact, conclusion of law, judgment and opinion of the Court dated March 2, 1942.

3. Findings of fact, conclusion of law, judgment and opinion of the Court dated January 3, 1944.

4. The following documentary evidence, copies of which (except as to physical exhibits) are furnished herewith:

(a) Report of the Department of the Interior in form of a letter dated March 3, 1934, from Oscar L. Chapman, As-
[fols. 103-104] sistant Secretary, to the Attorney General, filed December 10, 1934 (without attached letters).

(b) Motion for call upon the Secretary of the Interior filed October 11, 1935, allowed October 24, 1935, and the reply thereto of the Secretary of the Interior dated April 29, 1936, and filed May 1, 1936, and letter attached thereto from the Assistant Commissioner of the General Land Office to the Commissioner of Indian Affairs dated January 24, 1936.

(c) Supplemental report of the Assistant Secretary of the Department of the Interior dated April 22, 1938, filed May 29, 1939 (without exhibits).

(d) Motion for call on the Department of the Interior filed July 24, 1939, allowed July 27, 1939, and reply of the

Department of the Interior dated September 16, 1939, and filed September 18, 1939.

(e) Map transmitted by the Secretary of the Interior with the report of the Secretary of the Interior filed May 1, 1936, set forth in paragraph 4 (b), above.

[105-106] (f) Map transmitted by the Secretary of the Interior with the Report of the Secretary of the Interior filed September 18, 1939, set forth in paragraph 4 (d) above.

(g) Map marked Plaintiffs' Exhibit No. 5 filed in open court March 4, 1941.

(h) Plaintiffs' Exhibit No. 4 filed in open court March 4, 1941, objected to by defendant.

Plaintiffs request that items (e) to (h) inclusive, above, be transmitted by the Clerk of this Court to the Clerk of the Supreme Court of the United States as physical exhibits. When completed and certified, it is requested that the remaining portions of the transcript of record be sent to the undersigned, attorney for the plaintiffs above named.

(sgd) Ernest L. Wilkinson, Attorney of Record.

[fols. 107-108] ORDER SETTLING AND APPROVING TRANSCRIPT OF RECORD ON PETITION FOR CERTIORARI—April 13, 1944

Plaintiffs, by their counsel, have filed an application for transcript of the record to accompany their petition for certiorari in which they request that there be included in the transcript, in addition to the pleadings, the findings of facts, conclusions of law, judgments, and opinions of the Court of March 2, 1942, and January 3, 1944, certain documents set forth and described in paragraph 4 (a) to (h), inclusive, of the application for transcript. The defendant offers no objection to the transcript including the documentary portions of the record requested in paragraphs 1 to 4 (g), inclusive. Defendant objects to the inclusion in the approved transcript of the record, as a part of the evidence in the case, of the documents requested in paragraph (h) of the application—that is, "plaintiffs' exhibit 4 filed in open Court March 4, 1941, objected to by the defendant."

Plaintiffs' exhibit 4 above-mentioned was not offered in evidence until after the requests for findings of facts and [fols. 109-110] briefs had been filed by the parties and the case had been called for argument before the Court for submission on March 4, 1941. Defendant had had no oppor-

tunity at the time the documents contained in plaintiffs' exhibit 4 were offered in evidence in open Court, as aforesaid, to fully examine the same or to meet and answer, by examination of witnesses or the offer of other evidence, any statements or alleged facts therein contained. For these reasons defendant objected to the receipt in evidence of the proffered exhibit 4.

Said exhibit 4, together with certain other documents consisting of maps not objected to, was permitted by the Court to be filed, subject to defendant's objection. No request was made by plaintiffs to have the case remanded to the General Docket for further proof. After submission of the case, and upon consideration thereof by the Court, defendant's objection to the receipt in evidence of plaintiffs' exhibit 4 under the circumstances was sustained by the Court. Plaintiffs were allowed an exception to this ruling of the Court.

[fols. 111-112] The transcript requested by plaintiff, having been considered and examined, is, this April 13, 1944, settled and approved as being those portions of the original record in this Court material to the errors assigned. The documents contained in "Plaintiffs' Exhibit 4" are included in the transcript under plaintiffs' exception to the ruling of the Court sustaining defendant's objection thereto.

The Clerk of this Court will transmit to the Clerk of the Supreme Court of the United States, as physical exhibits, the documents set forth and described in paragraphs 4 (a) to (h), inclusive, which are included in the approved transcript herein.

By the Court: Richard S. Whaley, Chief Justice.

[fol. 113] OTHER PORTIONS OF RECORD REFERRED TO IN ORDER SETTLING RECORD

Department of the Interior
Office of the Secretary
Washington

March 3, 1934.

The Honorable the Attorney General.

MY DEAR MR. ATTORNEY GENERAL:

Further reference is made to your communication of April 23, 1931, with which you transmitted a copy of Peti-

tion No. M-107, filed March 28, 1931, in the case of the Northwestern Band or Tribe of Shoshone Indians against the United States, in the United States Court of Claims.

Paragraph I of the petition divides the Shoshone Nation into three branches, known as the Eastern, the Western, and the Northwestern branches. The Eastern Shoshones occupy the Wind River Reservation in Wyoming. They have heretofore filed a suit in the United States Court of Claims, the petition in which is dated May 27, 1927, No. H-319, in said court, which case is now pending. The Western Shoshones have not filed a suit, for the reason that no jurisdictional act has been placed upon the statute books.

The Shoshonean family is described on page 555, Bulletin No. 30, Bureau of American Ethnology, No. 2, and the Shoshone proper is described on page 556 of the same volume. This description does not divide their lands among the bands, but it does give a general outline of their habitat, and shows that the Bannocks, also a member of the Shoshonean group, occupied a part, at least, of the country now claimed by the Northwestern Band of Shoshones. (For a description of the Bannocks and their habitat, see the above cited publication, Volume 1, page 129.) The classification of the Bannocks as Shoshones would account for their location on the Fort Hall Reservation in Idaho, mention of which is made in paragraph XI of the petition.

The Bruneau Shoshones, mentioned in paragraph I of the petition, are also shown on page 168 of the above publication as occupying part of the lands described in the petition as belonging to the Northwestern Band of Shoshones. The Boise Shoshones are not described but are mentioned in the synonymy of this publication, and given the name Wihinasht. The Panaiti Tribe is the same as the Bannock. [fol. 114] Paragraph II of the petition purports to quote the jurisdictional Act of February 28, 1929, which is published in Forty-five Statutes at Large at Page Fourteen Hundred and Seven.

Paragraph III of the petition introduces the petitioners, and shows the authority of the attorneys to represent the tribe.

Paragraph IV of the petition purports to describe, generally, the habitat of the entire Shoshone Nation in 1863, said to have been held by it, for its exclusive use and occupancy, except a small area around Great Salt Lake occupied by the Mormons as a refuge. The lands occupied by the

Mormons around the Great Salt Lake were preempted by them without first obtaining title from the Indians, and, later, apparently became a cause of dissatisfaction by the Indians. The domain of the Shoshone Indians, is shown under Nos. 444 and 520 on the maps in Royce's Land Cessions of the United States, of the States of Utah, Nevada, California, Oregon, Idaho, and Wyoming. The territory shown on the maps above referred to was recognized by the United States as belonging to the various bands of Shoshone Indians by the treaties of July 2, 1863 (18 Stat. L., 685), July 30, 1863 (13 Stat. L., 663), October 1, 1863 (18 Stat. L., 689), and July 3, 1868 (15 Stat. L., 673). The Bannocks were members of the Shoshone family, and joined the Eastern Shoshones in the treaty last above mentioned.

Paragraph V of the petition describes in detail all the lands as claimed by the Northwestern Band of Shoshones—

> * * * whose area extended from the aforesaid Bear River and Port Neuf Mountain country along the Snake River in the north and to the country of the Great Salt Lake on the south and westward to the mountains near the boundary between Utah and Nevada wherein lie the headwaters of the Raft River and Goose Creek, which flow in the Snake River, * * *

The area of the above described boundary has been computed by the General Land Office to be 8,683,622 acres. The explanation of that office of the method of computation is given as follows:

> The boundaries of the areas in question were laid down on maps of the several States published by the General Land Office on a scale of approximately 12 miles to the inch, in what is believed to be the most reasonable interpretation of the descriptions given, some of which are indefinite. The areas were then determined by the aid of planimeter readings. Although [fol.115] the figures given show significant digits in the units column, it should be remembered that these figures are based upon planimeter readings of areas with uncertain boundaries and should be considered only as approximations.

This paragraph also refers to the limited knowledge of the Government in 1855 and 1856 as to the population of Indian tribes in western Colorado and Wyoming, Utah, and

Idaho, and mentions the fact that the Shoshone Tribe was not even mentioned in the Commissioner's reports of 1855 and 1856.

The first census of these Indians taken with any degree of accuracy was in 1868, and is shown in report No. 28 of the Commissioner of Indian Affairs for 1868. It shows 2,000 Eastern Shoshones, 1,800 Northwestern Shoshones, and 2,000 Western Shoshones. The fact that the Shoshones were not mentioned in the reports for 1855 and 1856 should not be taken as evidence that the United States knew nothing about these Indians. They were known to be in southeastern Idaho before this date, and it was also known that they ranged in certain areas of country west of the Rocky Mountains and in the neighborhood of Great Salt Lake long before 1855. These Indians had been found in southern Idaho as early as 1830, although no census was ever taken of them until after treaties had been made and ratified.

Paragraph VI of the petition refers to the treatment of the Indians which caused their degredation and resultant attacks and depredations upon the whites.

The cause of strife with these Indians is shown in the report of the Commissioner of Indian Affairs for 1861, page 21, also reports Nos. 49, 50 and 53 of the Commissioner's reports for 1861. These reports are not being analyzed or discussed, but a reference thereto will show that it was not altogether the discovery of gold in Idaho and the influx of dissolute and reckless white men which caused the dissatisfaction of these Indians. While some of the Shoshones were induced to go upon the warpath, those Indians who were mainly the cause of the depredations through whiskey and white renegades appear to be the Utes of Utah. See report No. 41 of the Commissioner of Indian Affairs, September 16, 1862. The enclosures herewith also deal with one of the causes of strife between the Indians and the whites to which attention is invited. Another cause may be inferred from the fact that widely scattered Indian outbreaks about this time occurred, notably, by the Chippewa and Sioux of Minnesota, the Apaches and Navajoes of New Mexico and Arizona, and the Cheyenne and Arapaho Indians. Considerable unrest was also noted in the tribes in Washington, [fol. 116] Idaho, Utah, and other places, all of which would seem to indicate the possibility of a contemplated general Indian up-rising during the early part of the Civil War. All

three of the reasons above mentioned would, no doubt, account for the unrest and depredations of these Indians. (For an account of the Indian outbreaks see reports Nos. 42 and 44 of the Commissioner of Indian Affairs for 1862.)

Parargaph VII of the petition refers to the attitude of the Indians toward the Government and their defeat by the troops.

A rather full account of their attitude is given in the answer to Paragraph VI above and the references cited therein and the enclosures transmitted herewith.

Paragraph VIII of the petition quotes the three treaties of the three different divisions of the Shoshone Nation of Indians, those of July 2, July 30, and October 1, 1863, references to which are made in the answer to Paragraph IV above, and alleges that article 5 of the treaty of July 30, 1868, with the Northwestern Shoshones was added to the treaty by the Senate at the time of the ratification thereof. It is further alleged that the Indians consented to and ratified the amendment at the instance and request of the United States, even though the Indians had no knowledge as to Mexico "or the purpose or intent intended to be conveyed by said article 5."

In the case of the Otoe and Missouri Indians v. United States (52 Ct. Cls. 424), it was held, in effect, that the courts were not authorized to go behind the terms of the treaty in endeavoring to determine the understanding of either party thereto. This treaty was promulgated in January, 1865, being the first of the three treaties to become a valid document. Page 665 of the Thirteenth Statutes at Large, contains this certificate:

> Now, the said amendment having been, this 18th day of November, A. D. 1864, at a council held with the said chiefs and warriors at Box Elder, under the instructions of the President of the United States, submitted to the said chiefs and warriors for their consideration and acceptance, and the same having been read and fully interpreted to them in their own language, the said chiefs and warriors, for themselves and for the Shoshonee nation, do hereby agree and consent to the said amendment to the said treaty; and do stipulate that the same shall be and is hereby accepted and adopted as one of the articles thereof, and forever binding upon them and their said nation.

[fol. 117] In witness whereof the said Commissioner and the Superintendent of Indian Affairs in the Territory of Utah, on the part of the United States, and the said chiefs and warriors, on the part of the Shoshonee nation, have hereunto set their hands this eighteenth day of November, A. D. 1864.

James Duane Doty, Commissioner. O. H. Irish, Sup. Indn. Affairs. Pokatello, x his mark. Toomontso, x his mark. Sanpitz, x his mark. Tosowitz, x his mark. Tahkwetoonah, x his mark. Omashee (John), Pokatello's brother, x his mark.

The treaty commissioners and six chiefs and warriors of the tribe certified that the amendment was submitted to the chiefs and warriors for their consideration and acceptance and was read and fully interpreted to them "in their own language." Irrespective of the prior holding of the Court of Claims in connection with the interpretation of treaties, it would appear that the treaty itself declares that the amendment was fully interpreted to the Indians in their own language. They agreed to, ratified it, and it became a part of the treaty itself, even though it did not appear as article 5 in the document as originally drafted. Utah lies wholly within the Mexican cession to the United States in 1848.

This article is identical with article 7 of the treaty of July 2, 1863, proclaimed June 7, 1869. In fact, article 7, of the July 2 treaty appears to have been inserted in identically the same manner as article 5 of the July 30 treaty. This article nor no similar provision appears in the October 1 treaty proclaimed October 21, 1869. There has nothing been found in the records and files in this Department which would explain why this provision was inserted in two of these treaties but not in the other, but such reasons, either for its presence or absence in either instrument, appears to be immaterial. Further, there has nothing been found to indicate that the Indians did not fully understand the import of the article.

This paragraph of the petition refers further to the Goship treaty of October 12, 1863 (13 Stat. L., 681), probably for the purpose of closing the boundaries of the lands of the Shoshone Indians, and especially those of the Northwestern Band.

Paragraph IX of the petition describes the land alleged to have been held by the Northwestern Band of Shoshone Indians by actual exclusive use and occupancy, unquestioned by any other Indian tribe or by any civilized nation. [fol. 118] The paragraph further alleges that the United States recognized the land described as belonging to this band of Shoshones.

Three treaties were made with the three largest divisions of the Shoshone Nation, and one with the Goship or Goshute Band of Shoshones, as heretofore set out in the answer to Paragraph VIII of the petition. There is nothing in any individual treaty which would fully describe the land of any particular band, or, in fact, of the entire Nation. All four treaties must be read together to determine the extent of the entire national domain of these Indians and as described in the treaties. (See article 4 of the treaty of July 2, 1863, article 4, July 30, 1863, article 5, October 1, 1863, and article 5, October 12, 1863). We have been unable to locate anything in the records of this Department which would in any way tend to definitely and accurately identify the lands claimed by any particular band or division of this tribe or nation. The boundaries of the lands of the plaintiffs, as alleged, have been specifically set out in this paragraph of the petition, and the General Land Office has computed the area by the planimeter to be 11,574,374 acres.

This paragraph further alleges that the United States took possession of the lands of these Indians without a cession thereof to the Government and without the consent of the Indians being previously obtained, all of which is alleged to have been without authority of law.

Article 5 of the treaty of July 30, 1863, added by the Senate and ratified by the Indians, as heretofore stated, provided, in effect that the treaty should not be construed to admit any greater title in the Indians than that recognized as existing in them by Mexico. The policy of the Mexican Government in regard to Indian tribes is briefly outlined on pages 29 and 30 of the petition. The Indians, therefore, apparently had a bare right of occupancy defeasible by the United States without compensation other than the establishment of other homes for them. The new homes to be provided need not necessarily be established in the original domain of the Indians.

By Executive Order of February 12, 1875, the President

the exclusive use of mixed tribes of Shoshone, Bannock, and Sheepeater Indians". This reservation was estimated to contain approximately one hundred square miles, and was for any of the members of the three tribes mentioned irrespective of bands. Therefore, the United States appears to have followed the policy of Mexico, as provided by the treaty, and established a home for these Indians at Lemhi.

[fol. 119] Many of the Shoshone Indians of the Northwestern Band failed to take advantage of their right of removal, preferring to remain upon the lands near Salt Lake among the whites.

In Paragraph X of the petition an effort is made to separate the Bannock Tribe from the Shoshone Nation, and to show that they were forced by the press of immigration to abandon their lands in Montana and to occupy the lands of the Shoshones in southeastern Idaho.

Reference has been made heretofore in the answer to Paragraph I herein, to the Bannocks, and to the description of these people and their habitat, as outlined on pages 129 and 130, Part I, Bulletin No. 30, Bureau of Ethnology. It should be noted from this report that the Bannocks had been found in southeastern Idaho as early as 1829, and that Bonneville found them established on the Portneuf River just north of the Fort Hall Reservation in 1833. This bulletin classifies them as Shoshonean but more closely related to the Shoshones in western Nevada.

Reference is made in this report to the fact that these Indians claimed land in Montana, and cites the report of the Commissioner of Indian Affairs of 1869, page 289, as authority for the claim. This claim is also made in Paragraph X of the petition. A reference to the Commissioner's report of 1869 will show that the "Bannacks" are included in the report of Lieut. Col. Alfred Sully, Superintendent of Indian Affairs for Montana, dated September 23, 1869, at Helena, Montana, that part relating to the "Bannacks" being as follows:

> Are a very small tribe of Indians, not mustering over five hundred souls. They claim the southwestern portions of Montana as their land, containing some of the richest portions of the Territory, in which are situated Virginia City, Boseman City, and many other places of note. I believe it is the wish of the govern-

ment to place them on the reservation for the Snakes in Idaho, near Fort Hall. They do not, therefore, properly belong to my superintendency. They met me at Fort Ellis and begged me to allow them to accompany me to the Yellowstone country. They were in a deplorable condition, half starved, many of them without lodges, and what few they had were miserable cotton affairs, which could hardly stand the wind. They staid with me a few days on the Yellowstone, where they picked up amazingly on the game and fish that abound in that region. I gave them some flour and some powder and lead, and they started for the buffalo country, telling me they would overtake the Crows and hunt with them till winter. These Indians are quite intelligent, and many of them willing to work. They boast of the fact that not one of them ever shed the blood of a white man. They would be pleased to [fol. 120] be located on the reservation with the Crows. I spoke to them about their going to their reservation near Fort Hall, but they expressed the greatest aversion to that place; for what reason I could not learn. It is to be hoped that something will be done to assist them, for they are not only in need of it, but are deserving as any Indians we have in our country.

Attention is invited to the statement that these Indians "claim the southwestern portion of Montana as their land", and include the territory around Virginia City, Bozeman, and other portions in that locality.

Report No. 70 of the Commissioner of Indian Affairs, for 1869, states that the "Bannacks" always claimed the country around Fort Hall.

There is nothing to show when or why this small band of five hundred Bannocks went into Montana or how long they had been there. Virginia City and Bozeman are both located in the territory known as the common hunting ground of a number of tribes, and recognized as Blackfoot territory by the treaty of October 17, 1855 (11 Stat. L., 657). As they and the Blackfeet Indians were enemies they were not mentioned in the 1855 treaty. Therefore, it is not probable that their residence in Montana had been of long duration. Their claims, however, may have been asserted for lands which had long been lost to them by conquest to the Blackfeet Indians.

The Bannocks were, later, placed among their kindred on the Lemhi and Fort Hall reservations.

Paragraph XI of the petition quotes article 2 of the Eastern Shoshone and Bannock treaty of July 3, 1868 (15 Stat. L., 673), and alleges, in effect, that the United States failed to comply with said article when the Bannocks were placed upon the Fort Hall Reservation instead of on the Wind River Reservation with the Eastern Shoshones.

It is evident from the reading of this article that two reservations were contemplated thereby, one for the Bannocks, which would embrace portions of the Portneuf and the "Kansas Prairie" countries, and the other for the Shoshones on the Wind River Reservation, Wyoming. The Wind River Reservation was actually established by the terms of this article, but the Bannock Reservation was to be set aside by Executive Order. The Bannock Reservation (Fort Hall) was set aside by Executive Order of [fol. 121] June 14, 1867 (this was before the treaty providing a reservation for the Bannocks). The Fort Hall Reservation is in territory now claimed by the Northwestern Band of Shoshones, but the Camas Prairie mentioned herewith and referred to in the treaty as the "Kansas Prairie", is shown in Rand, McNally and Company's Atlas as being in Camas County, Idaho, which is in territory claimed by and acknowledged to be in the possession of the Western Band of Shoshones.

This paragraph also claims that the United States failed to locate the Bannock Indians on the Wind River Reservation, Wyoming, but instead gave them a reservation in Idaho, and settled the Arapaho Indians on the Wind River Reservation. The settlement of the Arapahoes on the Wind River Reservation is involved in the Eastern Shoshone suit in the Court of Claims against the United States, No. H-219. A reference to article 2 of the treaty of July 3, 1868, as quoted in this paragraph, will disclose that the United States never intended to settle the Bannocks upon the Wind River Reservation, but instead, agreed to give them a reservation by Executive Order, embracing "reasonable portions of the 'Port Neuf' and 'Kansas Prairie' countries" for their occupancy. It does not appear that the United States set aside any part of the great Camas Prairie for the Bannocks, although a compliance or a noncompliance with this provisions of the treaty of 1868 appears to be immaterial to a decision in this case, inasmuch as the Bannocks appear

to be not parties to the suit, and the Camas Prairie is in land claimed by the Western Band. A reference, however, to the discussion of "Camas", page 196, Part I, Bulletin No. 30, heretofore cited, will show that there were other beds of Camas than those in the great Camas Prairie, all along the western slope of the Rocky Mountains extending to the Pacific Ocean, and there was no doubt a sufficient quantity of this root for the needs of the Indians on or in the immediate vicinity of the Fort Hall Reservation.

By Executive Order of July 30, 1869, the President declared the Fort Hall Reservation to be the reservation provided for the Bannocks in the treaty of July 3, 1868. The lands of the Shoshones are described on page 556, Part II, Bulletin No. 30, above referred to, as follows:

> * * * They formerly occupied w. Wyoming, meeting the Utes on the s., the entire central and southern parts of Idaho, *except the territory taken by the Bannock*, N. E. Nevada, and a small strip of Utah w. of Great Salt Lake. * * * (Italics supplied).

The Bannocks were not specifically mentioned in either of the Shoshone treaties of 1863, although the Government [fol. 122] recognized all the land as belonging to the Northwestern bands of Shoshones. It should be noted that in the July 30 treaty the word "bands" is given in the plural. Each of the three treaties of 1863 were negotiated with divisions of the Nation, and each division was made up of a number of bands. The Fort Hall Reservation was set aside specifically for the Boise and Bruneau bands of Shoshones, and the Bannocks, all of which were among those living in the northwestern part of the domain of the Shoshone Nation. The Sheepeater tribe was also a division of the northwestern subdivision of the Nation, a description of which is found on page 835, Part II, Bulletin No. 30, referred to heretofore, under the designation Tukuariko.

Paragraph XII of the petition refers to the treaties between the United States, Mexico, and Great Britain. It also refers briefly to the Mexican policy, and alleges that the United States did not provide new homes for the Indians or purchase their right of occupancy.

These allegations have been fully answered heretofore under Paragraph VIII, IX, and XI.

Paragraph XIII of the petition describes the country alleged to have belonged to the Northwestern Band of Shoshones.

As heretofore stated, there has nothing been found in our records, except as given in Royce's Land Cessions of the United States, and in Bulletin No. 30 heretofore referred to, to show the lands of any particular band, or the lands of the entire division of the Shoshone Nation that participated in the treaty of July 30, 1863. However, the General Land Office's planimeter computation of the area described in this paragraph of the petition shows a total of 12,667,392 acres, 5,606,093 acres of which is in Utah, and 7,061,299 acres in Idaho.

This paragraph, after mentioning specific quantities in Utah and in Idaho, refers to land in Wyoming and Nevada, to which it is inferred the said Indians assert some sort of claim. The above computation does not include any lands in Wyoming or in Nevada. However, the General Land Office computed the area described in a call of the Court of Claims on this Department, and found that certain lands described in the call lay in Wyoming and mentions 314,265 acres, with an area in Nevada of 2,765 acres. This paragraph alleges also a claim for fifteen million dollars for land, including the value of the Camas Prairie, and Sago root country. The Camas Prairie is outside the boundaries of any area described for these Indians, and we have been unable to locate any region known as Sago root country. [fol. 123] Paragraph XIV of the petition asks for an accounting, and alleges a claim for seventy thousand dollars with interest, for failure of the United States to comply with the terms of the treaty relating to payments provided for under the treaty.

It is assumed that the General Accounting Office will analyze the accounts of these Indians and submit a report thereon to your Department.

Paragraph XV of the petition states the population of the various divisions of this Nation in 1863.

As heretofore stated in the answer to Paragraph IV, we are unable to furnish any accurate figures as to the population prior to 1868. Therefore, we are unable to say whether or not the statement made herein as to population in 1863 is correct.

Paragraph XVI of the petition asserts a total claim of $15,070,000, or some other sum, and prays judgment in that amount and for attorneys' fees.

The amount, if any, to be awarded the Indians is a matter for the court to determine.

There are enclosed herewith two copies each of letters, one dated January 2, 1851, from H. R. Day to the Commissioner of Indian Affairs, and three dated May 2, May 8, and June 28, 1852, from J. H. Holeman, Indian Agent, Great Salt Lake City, Utah.

The first gives a summary of the tribes in Utah, and the letters from Mr. Holeman deal with the unrest and the causes therefor of the Shoshone Indians.

Very truly yours, (signed) Oscar L. Chapman, Assistant Secretary.

Enclosure 315163.

[fol. 124] IN THE COURT OF CLAIMS

No. M-107

THE NORTHWESTERN BAND OR TRIBE OF SHOSHONE INDIANS AND THE INDIVIDUAL MEMBERS THEREOF, Petitioner,

vs.

THE UNITED STATES OF AMERICA, Defendant

MOTION FOR CALL UPON THE SECRETARY OF THE INTERIOR

Now comes the Petitioner in the above entitled cause by their attorneys, Charles H. Merillat and Charles J. Kappler, and moves the Court that a Call upon the Secretary of the Interior be made to file with the Court certain information indicated below, which counsel state is relevant, material and competent to the cause of the Petitioner, viz:

(1). Total number of acres within the area bounded as follows:

"Portneuf Mountains on the East; the Valley of the Snake or Shoshone River on the North and extending as far as Raft River; on the West by Raft River; and on the South by Great Salt Lake," giving separately the number of acres in Utah and the number of acres in Idaho within the foregoing described area.

(2). Total number of acres within the above described area granted to Railroad Companies under land-grants by Congress.

(3). Names of the National Forest reservations created by the United States within the above described area; dates when such reservations were established; the estimated number of acres in each such reservation; whether such reservations are located in Utah or Idaho; and the number of acres in each such reservation separately where any reservation is partly within each said State.

(4). Total number of acres within the above described area granted to Utah and number of acres granted to Idaho for school purposes.

(5). Total number of members of the Shoshone Nation of Indians when the treaties of July 2, 1863 (18 Stat. 685-2 Kappler, 848) and July 30, 1863 (13 Stat. 663-2 Kappler, 850) were made.

(6). Copy of the rolls of the members of the Northwestern Band of Shoshone Indians upon which the twenty (20) annual payments of $5,000. each was stipulated to be paid to said Band by the treaty of July 30, 1863.

(7). Copies of receipts from the Northwestern Band of Shoshone Indians showing payment to them in money or goods of the $5,000. stipulated to be paid said Band by the treaty of July 30, 1863.

[fol. 125] (8). Copy of Communication from Acting Indian Commissioner Van Valkenburg, dated September 22, 1865, addressed to Governor Caleb Lyon, of Idaho, together with copy of report made by Governor Lyon in reply thereto, recommending a reservation in Southern Idaho on the Malade or Shoshone River for protection of settlers on the Great Camas Prairie.

(9). Photostatic copy of Land Office Map of Idaho, 1913, showing Portneuf Mountains.

Respectfully submitted, (Signed) Charles H. Merillat, Attorney of Record.

Charles J. Kappler, of Counsel.

[fol. 126] COURT OF CLAIMS OF THE UNITED STATES

No. M-107

THE NORTHWESTERN BAND OR TRIBE OF SHOSHONE INDIANS AND THE INDIVIDUAL MEMBERS THEREOF

v.

THE UNITED STATES

Evidence for the Plaintiff

Reply of the Interior Department, for Claimant, Dated Washington, D. C., the 29th day of April, 1936

Claimant's counsel, Chas. H. Merillat and Joseph Chez; defendant's counsel, George T. Stormont.

United States Department of the Interior,

Office of the Secretary,
Washington, April 29, 1936.

Hon. Willard L. Hart, Chief Clerk, U. S. Court of Claims.

MY DEAR MR. HART:

Reference is made to your request of October 24, 1935, transmitting a call by the Court of Claims for certain information and documents for use as evidence in case No. M-107, the Northwestern Band or Tribe of Shoshone Indians and the individual members thereof *v.* The United States.

The motion for call contains 9 numbered paragraphs. Nos. 1, 2, 3, and 4 relate to land matters. The areas and data relative to the lands of these Indians have been compiled by the General Land Office and were submitted by letter of January 24, 1936, from the Assistant Commissioner of that office addressed to the Commissioner of Indian Affairs, the original of which is transmitted herewith.

In connection with the call the General Land Office transmitted certain maps called for in paragraph 9. These maps are enclosed herewith.

Paragraph 5 requested a statement as to the total number of members of the Shoshone Nation of Indians when the treaties of July 2 and July 30, 1863, were made.

The statistical tables in the reports of the Commissioner of Indian Affairs show the Northwestern Band of Shoshone [fol. 127] Indians to be from 1,500 to 1,800 from 1864 to 1868. The number given for 1869 is 1,200. Other bands are also shown in certain of the tables set out in the reports of the Commissioner of Indian Affairs, but the population of the entire nation is nowhere shown, and we have been unable to locate any other statements during these or prior years showing the population either of the entire nation or any band or bands thereof. The report for 1863 does not reveal the population.

Paragraph 6 requests a copy of the rolls of the members of the Northwestern Band of Shoshone Indians upon which the 20 annual payments of $5,000 each were to be paid by the treaty of July 30, 1863.

A careful search of the records has been made but we have been unable to find either the original or any copy of the payment roll of this band of Indians under the 1863 treaty. If such roll is now in existence it would no doubt be in the files of the General Accounting Office.

The above is also applicable to the information called for in paragraph 7.

There are enclosed herewith photostat copies of letters mentioned in paragraph 8 of the call.

With further reference to paragraph 5 there is also among the enclosures a copy of a roll of the Bannock and Shoshone Indians occupying the Fort Hall Reservation prepared in 1878, which is certified to by Joseph Hall, Second Lieutenant, 14th Infantry, as being a true copy of the original. The original of this roll is not in the files of this Department.

Sincerely yours, T. A. Walters, First Assistant Secretary.

Enclosure 794555.

(Filed May 1, 1936, Court of Claims.)

United States Department of the Interior,

General Land Office,

Washington, January 24, 1936.

In reply please refer to 1621727 "K" JAR.
Office of Indian Affairs, received January 25, 1936. 4551.

No. M-107

NORTHWESTERN BAND OR TRIBE OF SHOSHONI INDIANS

v.

THE UNITED STATES, CT. of CLS.

The Commissioner of Indian Affairs.

MY DEAR MR. COLLIER:

By your letter L-C 58652-35, November 4, you requested certain information for use as evidence in the above entitled suit, involving the area described as follows:

"Portneuf Mountains on the East; the Valley of the Snake or Shoshone River on the North and extending as far as Raft River; on the West by Raft River; and on the South by Great Salt Lake."

The information requested is as follows, reference being had to paragraphs of your letter as numbered by you:

[fol. 128] Paragraph 1

Number of acres thereof in Utah as shown by planimeter reading	1,577,000
Number of acres thereof in Idaho as shown by planimeter reading	2,713,000
Total	4,290,000

Paragraph 2

The area of land in the States of Utah and Idaho within the boundaries of the Shoshoni Indian Reservation (Northwestern Band), Treaty of July 30, 1863 (13 Stat. 663), and falling within the limits of the grant to the Central Pacific Railroad (now Railway) Company under the act of July 1,

1862 (12 Stat. 489) and the act of July 2, 1864 (13 Stat. 356), is as follows:

	Utah *Acres*	Idaho *Acres*	Total *Acres*
Properly patented to company under its grant	608,440.94	21,417.02	629,857.96
Erroneously patented to company under its grant (mineral segregations as shown by plat)	78.37	.....	78.37
Vacant subject to right of company under its grant	7.28	441.52	448.80
Vacant subject to right of company under its grant but which under the act of April 23, 1928 (45 Stat. 448), has been sold by the company to the United States, as evidence by quitclaim deed dated August 2, 1929, recorded Aug. 30, 1929, and approved by the Attorney General, December 17, 1929	8,770.76	.....	8,770.76
Patented to the company under the relief act of June 22, 1874 (18 Stat. 194), within the boundaries of the Indian reservation	1,353.07	.....	1,353.07
Total	618,650.42	21,858.54	640,508.96

Paragraph 3

The Forest Service by letter of January 14, 1936, submitted the following:

"The names of the National Forests involved are the Minidoka and the Cache, each of which is located partly in the State of Idaho and partly in the State of Utah.

"The old Raft River Forest Reserve was created by Proclamation of November 5, 1906, and was included in the Minidoka National Forest on July 2, 1908.

"The Port Neuf Forest Reserve was created by Proclamation of March 2, 1907, which was included in the Pocatello Forest Reserve on July 1, 1908. The Pocatello Forest Reserve was originally established on September 5, 1903. The Bear River Forest Reserve was created by Proclamation of May 28, 1906, and was transferred to the Pocatello Forest Reserve on July 1, 1908. The Pocatello Forest Reserve was transferred to the Cache National Forest by Proclamation of October 9, 1917.

"The areas within these two National Forests which were formerly within an Indian Reservation, as shown by the red line on the map submitted with your letter are: in Utah, 101,579 acres, of which 9,176 acres are in the Cache and 92,403 acres in the Minidoka; in Idaho, 370,969 acres, of

which 215,587 acres are in the Caché and 155,382 acres in the Minidoka."

[fol. 129] Paragraph 4 (School Grants)

The area of lands in the States of Idaho and Utah within the above-described boundaries is as follows:

	Utah *Acres*	Idaho *Acres*	Total *Acres*
Clear listed to State under indemnity school land laws	46,658.19	34,963.40	81,621.59
Granted to State in place for support of common schools	150,309.92	103,894.13	254,204.05
Lands selected by and clear listed to State under quantity grants made by acts of Congress	72,580.36	3,200.00	75,780.36
Total	269,548.47	142,057.53	411,606.00

Paragraph 9

In lieu of a photostatic copy of an official map of Idaho, 1913, showing Portneuf Mountains, a regular copy of said map is enclosed. Also a boundary map.

Very respectfully, Antoinette Funk, Assistant Commissioner.

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* * * * * * *

[fol. 130] United States Department of the Interior
Office of the Secretary
Washington

April 22, 1938.

The Honorable, The Attorney General,

My Dear Mr. Attorney General:

Reference is made to the suits by various bands of Shoshone Indians now pending in the courts.

When collecting data with reference to the suit of the Shoshone Tribe against the United States, No. 668 in the United States Supreme Court, we were unable to find a copy of a map transmitted with the various treaties negotiated with the Shoshones. Moyle & Wilkinson, attorneys of this city, under date of February 14, 1938, addressed a letter to the Commissioner of Indian Affairs in which they referred to the map submitted with such treaties and requested that it be found and a copy thereof be made for

them. In connection with Mr. Wilkinson, a further search reveals that a letter dated December 30, 1863, by the Commissioner of Indian Affairs to Hon. John B. Usher, Secretary of the Interior, included the map referred to with the five different treaties made by the United States with certain bands of Shoshone Indians. Instead of the map being returned to the Indian Office, it was transmitted to the Congress. The map was never returned to our files but recently it was obtained by the Archives from the files of the Senate. Copies were made and transmitted to the Indian Office.

Inasmuch as, had this map been located when the report on the Eastern Band of Shoshones was prepared it would have been transmitted therewith, there are enclosed herewith two photostat copies of the copies prepared by the Archivist. These copies are for use in any other litigation connected with the Eastern Band, Northwestern Band, or any other bands of Shoshones that may be permitted to file suit.

Sincerely yours, Oscar L. Chapman, Assistant Secretary of the Interior.

[fol. 131] IN THE COURT OF CLAIMS

No. M-107

THE NORTHWESTERN BAND OR TRIBE OF SHOSHONE INDIANS and Individual Members thereof, Plaintiff

v.

THE UNITED STATES, Defendant

MOTION FOR CALL ON DEPARTMENT OF INTERIOR

Now comes the plaintiff and moves that this Honorable Court call on the Department of the Interior for the following information and documents necessary to the prosecution of this cause, and relevant, material and competent evidence herein:

1. The total number of acres in the State of Idaho within the following boundaries, to-wit:

On the east by the Portneuf and Bear River ranges of mountains and the eastern shore of the Great Salt

Lake; on the south by the middle of the Great Salt Lake Desert, and the crest of the mountains separating the waters of the Snake and Humboldt Rivers; on the west by Salmon Falls on Snake River and the point on the crest of the mountains separating the Snake [fol. 132] and Humboldt Rivers where a line drawn from said Salmon Falls to the lower part of the Humboldt River and the Su-non-to-yah or Smith Creek Mountains, would intersect said crest of said mountains; on the north by the Snake River.

2. The total number of acres in the State of Utah within the boundaries as described in paragraph 1 of this motion.

3. The total number of acres in the State of Nevada within the boundaries as described in paragraph 1 of this motion.

4. A map showing the boundaries as described in paragraph 1 of this motion.

(Sgd.) Joseph Chez (by HJG) Attorney for Plaintiff.

Charles J. Kappler, Herman J. Galloway, Moyle & Wilkinson, Frank K. Nebeker. Of Counsel.

[fol. 133] United States Department of the Interior
Office of the Secretary
Washington

Sep. 16, 1939.

Hon. Willard Hart, Chief Clerk, United States Court of Claims.

My Dear Mr. Hart:

Reference is made to the call of the Court of Claims for information to be used as evidence in Suit No. M-107, The Northwestern Band or Tribe of Shoshone Indians v. the United States.

The General Land Office has prepared a diagram on a map of this area upon which is shown the boundaries of the lands involved and the areas in the States of Utah, Idaho and Nevada. The diagram is in answer to para-

graph 4 of the call, while the areas correspond to paragraphs 1, 2 and 3.

The area in Idaho, requested by paragraph 1, is found to be 6,067,000 acres; that requested by paragraph 2, is 6,389,000 acres, and that by paragraph 3 is 3,187,000 acres, making a total of 15,643,000 acres.

The diagram is enclosed herewith.

Sincerely yours, Oscar L. Chapman (sgd.) Assistant Secretary.

Enclosure 2290826.

[fol. 134] P. R. S. #12390

The Secretary of the Interior

Washington

Jun. 19, 1939.

Hon. D. Worth Clark, United States Senate.

My dear Senator Clark:

In further reference to your letter of April 20, in which you requested preparation of a map showing lands set apart for the Shoshone Indians under each of the five treaties in 1863 with the various divisions of the Nation, there is enclosed a map prepared in answer thereto.

The map was prepared in the General Land Office and follows closely the calls of the treaty as formerly interpreted by Governor Doty. There is enclosed a copy of a letter from the Assistant Commissioner, Office of Indian Affairs, to the Commissioner of the General Land Office of May 12 in which certain information was furnished and citations were given to documents from which the lines were more readily determined. There is also enclosed a copy of the letter from the Assistant Commissioner of the General Land Office to the Commisisoner of Indian Affairs transmitting the map to that Office.

In addition to the citations mentioned in the letters between the two Offices above-mentioned, access was had to certain maps and documents from the Geological Survey in determining the dividing lines between the different bands of the Nation, parties to these various treaties.

In determining the line between the territory of Pocatello and the Eastern Band of Shoshones, a record was found in the Geological Survey known as "Volume 12, Hayden Survey; also H. A. (200) 1, 1878 on page 17. Authority of Hayden, Prepared by Wheat." The map has not been approved by either the Commissioner or Assistant Commissioner of the General Land Office, but the enclosed copy of the letter of transmittal will, no doubt, serve as an approval thereof.

There is enclosed a copy of a memorandum which was also transmitted to the General Land Office for use in locating the boundaries.

Sincerely yours, (Sgd.) Harry Slattery, Acting Secretary of the Interior.

6-MS-13.
Enclosure 1962458.

[fol. 135] Address only the Commissioner of the General Land Office.

United States Department of the Interior
General Land Office
Washington

Jun. 8, 1939.

In Reply Please Refer to 1772863 "E".

The Commissioner of Indian Affairs.

My dear Mr. Collier:

Reference is made to your letter dated May 12 (your file: Land Division Claims 26778-39), in which you request that a map be prepared for Senator Clark showing the boundaries and the areas of the five divisions of the Shoshone Nation, according to the 1863 treaties, to be used in connection with pending legislation.

The map has been prepared and is transmitted herewith. The following papers are being returned:

Copy of the original treaty.

Bulletin No. 120.

Reprint of pages 625 to 634 of the American Anthropologist.

Doty map and another map transmitted with the treaty Uinta and Yampa Indians.

Memorandum giving the boundaries of the five divisions of the Shoshone Nation according to the treaties.

Very truly yours, (Sgd.) Antoinette Funk, Assistant Commissioner.

Encls.

[fol. 136] Refer in reply to the following:

Address only the Commissioner of Indian Affairs.

United States Department of the Interior

Office of Indian Affairs

Washington

May 12, 1939.

Hon. Fred W. Johnson, Commissioner of the General Land Office.

My dear Mr. Johnson:

The Department is in receipt of a letter from Hon. D. Worth Clark, United States Senator from Idaho, in which a request is made for the locations of certain Indian treaty lines and the areas lying within certain boundaries. A copy of the Senator's letter is enclosed.

While the areas described in the treaties were recognized as being in the possession of the Shoshone Indians, and no part, except that recognized as Eastern Shoshone land, was ever ceded to the United States, it was practically all disposed of as public lands of the United States. No accurate maps of the lands so recognized and so disposed of by the United States have ever been constructed.

Paragraph 1 of the letter from the Senator details the extent of the information desired as to the map. With the letter, there was enclosed a sheet showing the boundaries given in the treaties, together with citations thereto in Kappler, in all cases except one. The reference to the statutes at large has been inserted in the margin, in pen, for all except that of October 14, 1863, at Soda Springs, Idaho. This treaty was ratified by the Senate with an amendment, but was never presented to the Indians for their ratification, therefore it was not published in the statutes at large. There is enclosed herewith a copy of the original treaty which has been borrowed from the National Archives and

should be returned to this Office when it has served its purpose.

A careful study has been made of the calls of the treaties, and a description thereof has been prepared in the light of information available to this Office for both the exterior and the interior boundaries. A copy thereof is transmitted for what it may be worth in assisting your office in the construction of the map.

[fol. 137] As an aid to your office in identifying certain points in these lines, attention is invited to Part 28 of the Survey of Conditions of the Indians in the United States, the Hearings before a Subcommittee of the Committee on Indian Affairs, United States Senate, 72nd Congress, First Session, pursuant to S. Res. 79 and 308 (70 Cong.) S. Res. 263 and 416 (71 Cong.) and S. Res. 323 72nd Cong.) The principal points are mentioned on pages 14842 to 14846 and 14855.

Further information may be gleaned from Bureau of American Ethnology, Bulletin No. 120, pages 161 to 169, and pages 625 to 634, American Anthropologist, Vol 39, No. 4, October-December, 1937, which shows the location of the different tribes and bands in part of this area. The latter document contains a map of the location which does not show, with accuracy, the lines given in the treaties, but it may give some aid in the preparation of the maps. Bulletin No. 120, and a reprint of pages 625 to 634 of the American Anthropologist are enclosed. They are not the property of the United States but have been borrowed for your use, if desired. They should be returned to this Office when they have served their purpose.

There is also enclosed a map which accompanied the above mentioned treaties with the Shoshones, known as the Doty map. In addition, there is enclosed another map which was transmitted with the treaty with the Uinta and Yampa Indians. These maps were, temporarily withdrawn from the National Archives, charged to clerks in this Office and should be returned here. The Doty Map is not in first class condition.

Attention is especially invited to the request of the Senator contained in the last paragraph of his letter wherein he has requested a statement as to the acreage contained within certain boundaries described.

It would be appreciated if your office could construct this map at the earliest practicable date, as the original letter from the Senator was made P. R. S. special by the Department.

Sincerely yours, William Zimmerman, Jr. Assistant Commissioner.

Enclosure ~~T~~94245, 5 aw 9.

[fol. 138] I. Exterior Boundary of Shoshone Nation

Beginning at the point where the 112th meridian crosses the Bitterroot range of mountains, which forms the boundary between Idaho and Montana ("the mountains on the north side of the Valley of Shoshonee or Snake River"); thence east along the summit of that range to Yellowstone park; thence along the Continental Divide to the Wind River Mountains so as to include all of the headwaters of the Snake River; thence southerly along the summit of the Wind River range of mountains to the southern tip of said range; thence to the Sweetwater River ("Peenahpah River"); thence down said river to the point where it enters the North Platte River; thence in a southerly direction up the North Platte River; ("north fork of Platte or Koo-chin-agah") to its headwaters in North Park ("North Park or Buffalo House"); from the headwaters of the North Platte (Grizzly Creek, near the Continental Divide just east of Steamboat Springs) west aross the Continental Divide to the Yampa River ("Yampah River"); thence westerly with said Yampa River to the point where it enters Green River; thence to the eastern end of the Uinta Mountains ("Uintah Mountains"); thence along the summit of said range of mountains to its western end; thence from the western end of the Uinta Mountains, westerly via the highest points (probably the boundaries separating [fol. 139] Wasatch and Utah Counties on the south from Salt Lake and Summit Counties on the north) to the Oquirrh Mountains in the vicinity of Fort Crittenden Post so as to include Great Salt Lake, Tooele, and Rush Valleys ("Great Salt Lake, Tuilla, and Rush Valleys") (Governor Doty on his map drew the eastern boundary of the Goship Shoshones through the location of "Crittenden"); thence southerly along the summit of the Oquirrh Mountains to the southern tip of that range; thence along the "Green

Mountains'' mentioned in the Goship Shoshone treaty and ''Wi-co-bah and the Colorado Desert'' mentioned in the Western Shoshone treaty, to the southern end of the Desatoya Mountains in Nevada.

Testimony taken before the Subcommittee of the Senate Committee on Indian Affairs at Elko, Nevada, in 1932, showed that ''Wi-co-bah,'' meaning ''mountains covered with white,'' is the Indian name of a mountain about 8 or 10 miles southwest of Duckwater, Nevada, near the Ruby Valley guide meridian and between the 38th and 39th parallels. To the extent, if any, that the above boundaries are not ascertainable, then follow the outline as it appears on Governor Doty's map to the southern end of the Desatoya Mountains in Nevada. It will be noted on Governor Doty's map that the mountain or range of mountains which he fixed as the southern boundary of the Goship and Western Shoshones is located between the 38th and 39th parallels and a short distance east of the 116th meridian. It will be seen, also that this area was marked ''unexplored'' [fol. 140] on Governor Doty's map and that he made a few pencil or pen scratches to indicate the probable location of this boundary.

From the southern end of the Desatoya range of mountains (''Su-non-to-yah Mountains or Smith Creek Mountains''—Smith Creek Valley is immediately east of these mountains, and Smith Creek arises in the Desatoya Mountains; some old maps label the mountains wherein the Smith Creek rises as the ''Smith Creek Mountains''), the western boundary of Shoshone country should be drawn north along the summit of that range of mountains and the summit of the New Pass range of mountains; thence northerly along the summits of the ranges to the northward via Battle Mountain to the point where the 116th meridian and the 42nd parallel cross; thence northerly or northeasterly to the Bitterroot range of mountains via Salmon Falls on the Snake River; thence easterly along said Bitterroot range of mountains to the point of beginning.

It will be noted that on Governor Doty's map the western boundary line is drawn precisely through the intersection of the 116th meridian and the 42nd parallel. It will also be noted that the treaty with the Mixed Bands of Bannock and Shoshone Indians gives ''Salmon Falls on

Shoshonee River" as one of the western extremities of the Shoshone Nation.

[fol. 141] II. Interior Boundary Lines

Northwestern Shoshones

The boundaries of Northwestern Shoshone territory are as follows: beginning at the northern end of the Portneuf range of mountains ("Porteneuf Mountains"), southerly along the summit of that range to its southern end; thence via Brigham City (indicated as "Box Elder" on Governor Doty's map) to the eastern shore of Great Salt Lake (Willard Spur of Bear River Bay); thence southerly along the eastern shore of said lake to a point where a line drawn from west to east across the middle of the Great Sale Lake Desert ("middle of Great Desert") and projected across the lake, would intersect such eastern shore (probably to the vicinity of "Lake Point"); thence westerly along said line drawn through the middle of said desert to the western limits of said desert; thence in a westerly direction to Jasper, Nevada; thence northerly along the summit of the Pequop range of mountains to the northern end of said range; thence in a northwesterly direction so as to exclude the headwaters of all streams and rivers flowing into the Humboldt River (approximately via Fenelon and Summer Camp) to the summit of the range of mountains separating the rivers and streams flowing northward into the Snake River from the rivers and streams flowing southward and westward into the Humboldt River (this boundary would strike the summit of said range of mountains near the head-[fol. 142] waters of Deer Creek, which flows into Salmon Falls Creek); thence along the range or ranges so separating the waters of the Snake River from the waters of the Humboldt River to the point where said mountains are crossed by the western boundary of the entire Shoshone Nation heretofore designated; thence in a northeasterly direction along the said western boundary to Salmon Falls on Snake River; thence up said Snake River to a point due north of the northern end of the Portneuf Range of mountains; thence due south to said range of mountains and the point of beginning. The northern boundary of the Western

Shoshones is given in their treaty as the "Wong-goga-da Mountains and the Shoshonee River Valley". The high mountains in northern Nevada which separate the waters of the Snake and Humboldt Rivers are known by the Western Shoshone Indians as the Wong-goga-da Mountains. The summit of these mountains constitutes the southern edge of the Shoshone River Valley referred to in their treaty, for Snake River was formerly known as Shoshonee River as will be seen from an examination of Governor Doty's map.

The Northwestern Shoshone treaty defines separately that portion of Northwestern Shoshone territory claimed by one chief—Chief Pokatello. That area is separated from the other Northwestern Shoshone lands by a line drawn as follows: beginning at the mouth of the Raft River; thence up said river to its headwaters in northwestern Utah; thence in a southwesterly direction (approximately via Montello and Cebre) to Jasper.

[fol. 143] *Western Shoshones*

The western and southern boundaries of the Western Shoshone country have already been defined as has the northern boundary, which also forms a portion of the southern boundary of the Northwestern Shoshones. There remains, therefore, only the eastern boundary separating the Western Shoshones from the Goship Shoshones to be defined. The Western Shoshone treaty states that the eastern boundary of those Indians was "Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley." The mention of Great Salt Lake Valley in this treaty obviously is a reference to one of the valley- south of Steptoe Valley in which, years ago, there existed a salt lake. Numerous "dry lakes" are to be found in southern and eastern Nevada. Steptoe Valley can be located on any map of Nevada lying between the Shell Creek and Egan ranges of mountains. The eastern boundary of the Western Shoshones, therefore, should be drawn as follows: from Jasper, Nevada, in a southerly direction along the summits of the Pequop, Shell and Fortification ranges of mountains until said line intersects the southern boundary of the entire Shoshone Nation heretofore outlined.

Goship Shoshones

The boundaries between the Goship Shoshones and the Western Shoshones and between the Northwestern Shoshones and the Goship Shoshones have been determined. [fol. 144] All that remains, therefore, is to locate the line separating the Goship Shoshones from the Eastern Shoshones. Great Salt Lake and the valleys of Rush and Tooele are given in the treaty with the Goship Shoshones as their eastern boundary. Rush and Tooele Valleys are just west of the Oquirrh range of mountains. Hence the dividing line should be drawn along the summit of this range of mountains. It should begin at the point where the exterior boundary of the entire Shoshone Nation, heretofore indicated, strikes said summit, northerly to the shore of Great Salt Lake. The projection of this line due north until it intersects the line drawn east and west across the middle of the Great Salt Lake Desert and across the lake to its eastern shore (northern boundary mentioned in the Goship treaty) would complete the boundary separating the Eastern and Goship Shoshones.

Mixed Bands of Bannocks and Shoshones

The Mixed Bands of Bannocks and Shoshones in their treaty were described as "occupying the Valley of Shoshonee River." In this treaty these Indians adopted and became bound by the provisions of the Northwestern Shoshone treaty. Therefore they could not claim that portion of Snake River Valley acknowledged to be Northwestern Shoshone land. Consequently the best way to de- [fol. 145] fine the area claimed by the Mixed Bands is to outline for them all of the Valley of the Snake River to the summits of the mountains on each side, excluding, however, those lands set apart for the Northwestern Shoshones. The western and northern boundaries of this area would coincide, of course, with the exterior boundaries of the entire Shoshone Nation.

Eastern Shoshones

The remaining portion of Shoshone country east of the boundaries of the Mixed Bands, Goship, and Northwestern Shoshones, is the area set aside for the Eastern Bands of Shoshone Indians.

Computation of Acreage

Senator Clark has requested that there be computed the number of acres in each of the areas outlined. He has further requested that where an area lies partly in one state and partly in another state the number of acres in each state be given.

Not only should there be a computation of the number of acres in the entire Northwestern Shoshone area, but there should be a separate computation of the area labelled by Governor Doty "Pokatello", as outlined above.

[fol. 146] P. R. S. 12399

Land Division. Claims. 26778-39. F G T.

May 9, 1939.

Hon. D. Worth Clark, United States Senate.

My Dear Senator Clark:

I have your letter of April 20, in which you request the preparation of a map showing the lands set apart for the Shoshone Indians under each of the five treaties made in 1863 with the various divisions of that Nation.

We shall be glad to prepare such a map and will also compute as accurately as possible the number of acres involved. Considerable research work will have to be done to obtain the necessary material and you will understand that it may take some time before the map and other data can be sent to you. We shall, however, push the work along as fast as possible.

Sincerely yours, (Sgd.) Harry Slattery, Acting Secretary of the Interior.

4-MS-29-1.

[fol. 147] D. Worth Clark, Idaho

12390

Committees: Irrigation and Reclamation; Joint Forestry Committee; Banking and Currency; Post Offices and Post Roads; District of Columbia; Patents.

United States Senate

Washington, D. C.

April 20, 1939

Honorable Harold L. Ickes, Secretary of the Interior, Washington, D. C.

My dear Mr. Secretary:

In order that I may be better advised in connection with pending legislation as to the claims of the Bannock and Shoshone Indians, many of whom are now located in my state, I would appreciate your having prepared for me by one of your map experts a map showing the lands set apart for each of the five divisions of the Shoshone Nation by five treaties negotiated in 1863. According to my information, these treaties were negotiated (1) with the Eastern Bands of Shoshone Indians on July 2, 1863, at Fort Bridger, Wyoming; (2) with the Northwestern Bands of Shoshone Indians on July 30, 1863, at Box Elder, Utah; (3) with the Western Bands of Shoshone Indians on October 1, 1863, at Ruby Valley, Nevada; (4) with the Shoshone-Goship bands of Indians on October 12, 1863, at Tuilla Valley (now Tooele), Utah; (5) with the Mixed Bands of Bannocks and Shoshones on October 14, 1863, at Soda Springs, Idaho. I have already introduced a jurisdictional bill in the Congress for certain of these Indians, and believe the requested map would be helpful to me and other Senators in understanding the problems involved.

I understand that recently there was discovered in the old files of the Senate Committee on Indian Affairs, which are now in the possession of the National Archives, the original map upon which Honorable James Duane Doty, Governor and Superintendent of Indian Affairs for the Territory of Utah, who negotiated the aforesaid treaties, traced the boundaries of the land thereby set apart for each of said five divi-ons. This map, I understand, was forwarded to

the Commissioner of Indian Affairs by Governor Doty soon [fol. 148] after he concluded the negotiation of the treaties, and was sent along with the treaties when they were transmitted to the Senate by President Lincoln for ratification. If you do not have a copy of Governor Doty's map, I am sure the original or a photostatic copy thereof can be obtained from the National Archives.

The base map which Governor Doty used to indicate the land set apart for the five divisions and which was probably the best map then available for his use, did not, as you will note, show all of the rivers, mountains, and other topographical features named in the treaties as constituting certain boundaries. Consequently, it seems that he was not able in a few instances to outline the treaty boundaries with complete exactness. I believe, however, that one of your expert draftsmen, having before him the boundary provisions of the five treaties and the map prepared by Governor Doty, could, with substantial accuracy, outline the areas set apart in these treaties for the five respective divisions of the Shoshone Nation. For your information and convenience I am enclosing herewith a copy of the boundary provisions as they occur in the five treaties, but you undoubtedly have access to the treaties themselves. In this connection, it appears that Governor Doty was originally commissioned to negotiate one treaty with the entire Shoshone Nation. He found such an undertaking impossible, however, because of his inability to assemble all of the chiefs and head men together at one time. Consequently he negotiated the aforesaid treaties with the five divisions of the Shoshone Nation. Under these circumstances it is obvious that they must be construed together.

I would appreciate also your having computed the approximate number of acres of land in each of the five areas; also, where one of these areas is partly in one state and partly in another, the approximate number of acres within each state.

Respectfully yours, (Sgd.) D. Worth Clark.

DWC:bk.
encl.

[fol. 149] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 150] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI

Upon consideration of the petition for extension of time within which to file a petition for a writ of certiorari to the United States Court of Claims in the above-captioned matter, it is this 13th day of March, 1944,

Ordered that time for filing a petition for a writ of certiorari in the above matter be, and it is hereby, extended for a period of 60 days from Apr. 3, 1944.

Harlan F. Stone, Justice.

[fol. 151] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 29, 1944

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.